

Mandates of the Working Group on Enforced or Involuntary Disappearances; 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 torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA CHN 5/2020

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Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; 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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 42/22, 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning what appears to be the arbitrary detention and risk of ill-treatment or torture of **Mr. Shao Zhongguo**, as a reprisal for his activities as a human rights defender, and his association with Mr. Gao Zhisheng, another human rights defender whose fate and whereabouts are currently unknown.

Mr. **Gao Zhisheng** is a lawyer and human rights defender who regularly represents victims of human rights violations. Mr. Gao Zhisheng has been the subject of several communications addressed to your Excellency's Government since 2005. The most recent communication concerning Mr. Gao's disappearance is dated 12 September 2017 (UA CHN 8/2017). We thank your Excellency's Government for the reply received on 13 October 2017 to that communication. We note information that the public security authorities have carried out an inquiry in accordance with the law, and that the case is still open. However, we are concerned that Mr. Gao remains disappeared and that his family have not received any information about his whereabouts.

We would also like to recall that Mr. Gao Zhisheng's case has also been treated under the humanitarian mandate of the Working Group on Enforced or Involuntary Disappearances (case no. 10002630).

According to the information received:

On 29 August 2019, Mr Shao Zhongguo (邵重国) was taken into custody in Yuncheng City, Shaanxi Province, the city of his normal residence. He was arrested by police officers and charged with "picking quarrels and provoking

trouble.” His detention may be in retaliation for his activities as a human rights defender and his association with Mr. Gao. It is feared that he may be subjected to torture or mistreatment in his current detention.

Mr. Shao was previously arrested twice in 2017 for his activities as a human rights defender, including his association with Mr. Gao.

Firstly, in May 2017, he received a 10-day administrative detention sentence after supporting an open letter written by another individual calling for President Xi Jinping to be replaced as head of the Chinese Communist Party.

Secondly, on 6 October 2017, he was placed under formal arrest on charges of “picking quarrels and provoking trouble” and “unlawful behaviour” in relation to the aforementioned letter and the use of social media to spread information maligning the Chinese Communist Party and the President. It is reported that these charges were pressed after Mr. Shao had visited Mr. Gao in Jia County, Shaanxi Province, on 28 August 2017, and had been detained by police from Yulin City, Shaanxi Province, on that same day. Given the timing of his arrest, it is reported that the charges against Mr. Shao may have been related to his visit to Mr. Gao. On 29 January 2018, Mr. Shao was issued with a five-month prison sentence by the Jia County People’s Court of Shaanxi Province, but was released on time served. During his detention he was allegedly subjected to torture and other forms of mistreatment, including beatings and deprivation of food and hygiene products.

While we do not wish to prejudge the accuracy of the information received, we express serious concern at the allegations that the detention of Mr. Shao may be related to his association with Mr. Gao and his activities as a human rights defender, as well as information that he was previously detained for similar reasons. We are additionally concerned that in his previous detention in 2018, he was allegedly subjected to torture and ill-treatment in detention and may be currently at risk of similar ill-treatment. Further concern is expressed at the reported administrative detention of Mr. Shao for exercising his freedom of expression. We also express concern that the fate and whereabouts of Mr. Gao remain unknown and that, rather than provide information on the fate and whereabouts of Mr. Gao, action has instead allegedly been taken by the authorities against his associates.

If these allegations prove to be true, they would contravene articles 5, 9, 19 and 20 of the Universal Declaration of Human Rights, which provide for the absolute and non derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the prohibition of arbitrary detention and the right to the freedoms of expression and association; as well as articles 2 and 16 of the Convention against Torture

and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which China ratified on 4 October 1988.

They would also contravene the Declaration on the Protection of all Persons from Enforced Disappearance, in particular articles 2, 3, 7, 10 and 13 and 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, 9 (5) and 12 (3).

We would like to highlight that the Working Group on Arbitrary Detention has found that charges of “picking quarrels and provoking trouble,” are so vague and broad that they could be used to deprive individuals of their liberty without a specific legal basis and violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration. The principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly (see Opinions 62/2018 and 36/2019). Moreover, as a signatory to the International Covenant on Civil and Political Rights since 1998, China is obliged, under article 18 of the 1969 Vienna Convention on the Law of Treaties, to refrain from acts that would defeat the object and purpose of the Covenant, such as the abuse of the fundamental principle of legality, and the repeated denial of the rights to liberty and to a fair trial under its articles 9 and 14.

We also refer to the recommendations accepted by China in the last cycle of the Universal Periodic Review to maintain a safe and enabling space for human rights defenders, to take the necessary measures to guarantee that human rights defenders can exercise their freedom of expression and peaceful association and to ensure they can conduct their work without harassment, intimidation or any kind of reprisals (A/HRC/40/6/Add.1, paras. 28.334, 28.337 and 28.342)

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 importance of the matter (i.e. the risk that Mr. Shao may be facing ill-treatment following his arrest and detention) we would appreciate a prompt response on the steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with China’s obligations under the conventions it has ratified or signed.

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 explain precisely what the factual and legal grounds for the arrest and detention of Mr. Shao are, what the charges are based upon, specifically, and how they are compatible with China's international human rights obligations.
3. Please provide information on Mr. Shao's conditions of detention and the mechanisms that are in place to ensure he is not subjected to any attempt against his physical or mental integrity, such as torture or ill-treatment.
4. Please provide detailed information on the investigations conducted into the disappearance of Mr. Gao, and if they have been conclusive what are his current fate and whereabouts, and whether his family has been informed about the investigations.

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 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 appreciate a prompt and detailed response to this urgent communication. In the meanwhile, we recommend that steps be taken to prevent violations of the rights of Mr. Shao and Mr. Gao, and in the event that the investigations undertaken by the Government of China corroborate these allegations, to ensure the accountability of any person responsible of the violations and to prevent their re-occurrence.

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.

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Leigh Toomey
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
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