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House Committee on Foreign Affairs, Subcommittee on Africa, Global Health and Human Rights

May 13, 2011

The Jasmine Crackdown: Disappearances, Torture, and the Silencing of China's Human Rights Lawyers

Introduction

The Chinese government's current crackdown on human rights lawyers, activists, artists, bloggers and others whom Chinese leaders perceive as a threat to Communist Party rule or "stability" is arguably the bleakest moment for human rights in China since the 1989 Tiananmen Square massacre and the arrests and convictions of activists and workers that followed.

In late February of this year, anonymous messages circulated on the Internet calling for Tunisian-style "Jasmine" protests in China. Uniformed and plainclothes police swarmed the sites designated for protests, international journalists were prevented from reporting (a few were beaten up), and several onlookers were detained. Even though these putative protests turned out to be non-events, the Chinese leadership – profoundly troubled by the pro-democracy uprisings in the Middle East and North Africa –have moved preemptively against activists, lawyers, and "mavericks" (as the Chinese state media dubbed the artist and activist Ai Weiwei), in other words, anyone whom they believe *could* organize, lead, inspire, or assist such an effort in China.

As of May 10, 2011, the NGO Chinese Human Rights Defenders had documented a total of 42 individuals who had been criminally detained since mid-February for peacefully exercising their rights to freedom of association, expression or belief (or, in other words, for simply being an activist, human rights lawyer, citizen journalist, or "maverick").¹ 23 cases of enforced disappearance have been documented; at least 16 individuals remain missing as of May 10. These numbers are not exhaustive; they reflect only the cases that have been documented. There have been some reports of torture. An estimated additional two hundred or so Chinese citizens have been affected by the Jasmine crackdown – unlawfully confined to their homes, interrogated, and/or threatened into silence.

¹ As of May 10, 2011, of these 42, seven have been formally arrested, two were sent to Re-education through Labor facilities, eight remain detained, and the rest have been released from custody, but many were released conditionally (on bail awaiting trial). Chinese Human Rights Defenders, "Individuals Affected by the Crackdown Following the Call for 'Jasmine Revolution'" (updated as of May 10), available at http://chrnet.org/2011/04/15/jasmine_crackdown/.

Torture, disappearances, and the political use of criminal law to suppress dissent are certainly not new phenomenon in China. Peruse earlier editions of, for example, the annual reports of the Congressional –Executive Commission on China (CECC), or the China section of Human Rights Watch’s annual World Report, or reports issued by the UN treaty bodies on China’s compliance with the human rights conventions China has ratified, and it is apparent that the Chinese government has used many of the same repressive tactics for years. The severity and scope of the Jasmine crackdown, along with the government’s increasing reliance on extralegal measures and its targeting of prominent figures in the “rights defense” (*weiquan*) or human rights movement, suggests that the Chinese leadership is now set on eviscerating the movement, fearful that it could become the platform for a Chinese Jasmine Revolution.

There is much to be alarmed about by the current human rights situation in China, which Secretary of State Hillary Clinton recently described as “deplorable,” and much that could be said. In this submission, I will focus on three aspects of the 2011 Jasmine crackdown: 1) disappearances; 2) torture, and 3) the silencing of China’s human rights lawyers.

1. Enforced Disappearances

As of May 10, according to Chinese Human Rights Defenders, since mid-February 2011 at least 23 activists, lawyers, netizens, and others have been disappeared. The prominent human rights lawyers Teng Biao and Jiang Tianyong were disappeared for over 2 months. The current whereabouts of 16 of those disappeared since mid-February, including Ai Weiwei, and Shanghai lawyer Li Tiantian, remain unknown. Renowned human rights defender Gao Zhisheng, who has been disappeared and tortured several times since September 2007, remains missing. With respect to the myriad methods used by the Chinese government to threaten and punish Chinese rights defenders, this recent wave of disappearances is unprecedented.² In its Fact Sheet on enforced disappearances, the UN Office of High Commissioner of Human Rights notes that enforced disappearance “has frequently been used as a strategy to spread terror within the society” and is not limited to the disappeared individual or his or her family.³ It appears that the Chinese government has adopted this strategy, and determined that enforced disappearance is an effective tool for suppressing and intimidating human rights defenders, their families, would-be activists, and anyone else that might be paying attention.

Enforced disappearances violate international human rights law, as well as China’s domestic law. The UN Declaration on the Protection of all Persons from Enforced Disappearance prohibits enforced disappearances, defining the term as the deprivation of a

² Disappearances have been used elsewhere in China, in different contexts. Human Rights Watch documented at least 43 cases of Uighur men and teenage boys who were disappeared after the ethnic strife in Xinjiang in the summer of 2009. See Human Rights Watch, “We are Afraid to Even Look for Them”: Enforced Disappearances in the Wake of Xinjiang’s Protests, October 20, 2009, available at <http://www.hrw.org/en/reports/2009/10/22/we-are-afraid-even-look-them-0>

³ Office of High Commissioner of Human Rights, *Enforced or Involuntary Disappearances*, Fact Sheet. No. 6/ Rev. 3, p.2, available at <http://www2.ohchr.org/english/issues/disappear/members.htm#facts>.

person's liberty by a state actor or someone acting directly or indirectly on behalf of the government or with its consent, coupled by the government's refusal to acknowledge such deprivation of liberty or disclose the fate or location of the disappeared person, which places the person outside the protection of the law.⁴ Enforced disappearances also violate rights contained in the Universal Declaration of Human Rights, including, for example, the right to liberty and security of person, the right to be free from arbitrary detention and torture and mistreatment, as well as fair trial rights. With respect to China's domestic law -- the Constitution, the Criminal Procedure Law and Criminal Law all have provisions that prohibit state actors from arbitrarily depriving citizens of their personal liberty.⁵

The UN Working Group on Enforced or Involuntary Disappearances issued a statement on April 8 expressing "serious concern" over the recent wave of enforced disappearances in China. The Working Group stated, "Enforced disappearance is a crime under international law. Even short-term secret detentions can qualify as enforced disappearances. . . . There can never be an excuse to disappear people, especially when those persons are peacefully expressing their dissent with the Government of their country."⁶

Those who remain missing include, among others:

- *Ai Weiwei*, artist/activist (missing since April 3), and at least four people who work with him: his driver, *Zhang Jinsong* (April 10), assistant *Wen Tao* (April 3), designer *Liu Zhenggang* (around April 12), and accountant *Hu Mingfen* (April 8). (The disappearances of affiliates of Ai Weiwei suggest that the Chinese government is likely "creating" a case against him.⁷)

⁴ Declaration on the Protection of All Persons from Enforced Disappearance (adopted by General Assembly resolution 47/133 of 18 December 1992), preamble, available at <http://www2.ohchr.org/english/law/disappearance.htm>.

⁵ See, e.g., PRC Constitution (1982), art. 37: "The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.

The PRC Criminal Procedure Law (see, e.g., arts. 64, 69, and 71) provides that within 24 hours of an individual being taken into custody, his or her family or employer (work unit) must be notified of the reasons for as well as the location of detention. The authorities must also issue a written detention warrant upon taking an individual into custody. After 37 days in custody, the individual must either be formally arrested (*daibu*) or released. Arrests must be approved by the procuratorate, a written arrest warrant must be issued, and notification to family of the reasons for the arrest and location of custody are required within 24 hours of the arrest. Both family notification provisions contain a cavernous loophole, however: notification is not required when it might "hinder the investigation."

Article 238 of the PRC Criminal Law criminalizes unlawful detention and other forms of unlawful deprivation of personal liberty, and provides for heavier punishment if such deprivation is perpetrated by a state functionary.

⁶ "China: UN expert body concerned about recent wave of enforced disappearances," April 8, 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10928&LangID=E>

⁷ See, e.g., Andrea J. Worden, "A Fair Game"? Of Law and Politics in China, and the "Sensitive" Case of Democracy Activist Yang Jianli," 40 *Georgetown Journal of International Law* 447, 464 and n.99 (Winter 2009)

- *Ceng Renguang*, Beijing human rights activist, missing since February 22.
- *Li Tiantian*, a Shanghai-based lawyer, missing since February 19 when she was taken from her home by police officers.
- *Liu Shihui*, Guangzhou human rights lawyer, missing since February 20.
- *Zhang Haibo*, netizen. He went to the designated site for the February 20 Jasmine protest in Shanghai, and was taken away by the police.⁸

In its April 8 press statement on the situation in China, the Working Group on Enforced or Involuntary Disappearances called upon China to “fully cooperate with” the Working Group and to “release all those who have been disappeared, to provide full information on the fate and the whereabouts of the persons who have allegedly disappeared.”

2. Torture

Torture is a widespread and persistent problem in China. Although China ratified the UN Convention against Torture over 20 years ago and has undertaken a variety of legislative and regulatory measures over the years in an effort to curb the problem, torture continues, both in lawful detention facilities and secret detention centers such as “black jails.”⁹ In its December 2008 report on its review of China’s compliance with the Convention against Torture, the UN Committee against Torture stated that it “remains deeply concerned about the continued allegations . . . of routine and widespread use of torture and ill-treatment of suspects in police custody.”¹⁰ It also noted that detention in secret detention facilities, such as black jails, constitutes per se disappearance.¹¹

Not surprisingly, torture frequently accompanies enforced disappearance; the disappeared are held incommunicado, they have no access to counsel or family, and they live in constant fear for their lives.¹² Gao Zhisheng was tortured during prior disappearances.¹³ If Gao is still alive, he undoubtedly is being tortured again.

(discussing how one of the “witnesses” against Yang Jianli had been detained in a Shanghai hotel solely for the purpose of extracting a false statement from him implicating Yang; he was told that he would not be released unless and until he provided the statement the police wanted.)

⁸ Chinese Human Rights Defenders, “Individuals Affected by the Crackdown Following the Call for ‘Jasmine Revolution’” (updated as of May 10), available at http://chrnet.org/2011/04/15/jasmine_crackdown/.

⁹ See Congressional Executive Commission on China (CECC), Annual Report 2010, at 88, 94-95 (October 10, 2010). “Black jails” are secret detention facilities that have no legal basis. They are primarily used to detain petitioners. See also Human Rights Watch, “An Alleyway in Hell”: China’s Abusive “Black Jails” (November 12, 2009), available at <http://www.hrw.org/en/reports/2009/11/12/alleyway-hell-0>.

¹⁰ UN Committee against Torture, Concluding Observations: China, CAT/C/CHN/CO/4, December 12, 2008, ¶ 11.

¹¹ Id. ¶ 14.

¹² See, e.g., Office of High Commissioner of Human Rights, *Enforced or Involuntary Disappearances*, Fact Sheet. No. 6/ Rev. 3, p. 1, available at <http://www2.ohchr.org/english/issues/disappear/members.htm#facts>.

¹³ See, e.g., CECC Annual Report 2009, at 97-98; China Aid, Free Gao Website, <http://www.freegao.com/>; Working Group on Arbitrary Detention, Opinion No. 26/2010 (PRC) (finding Gao Zhisheng’s detention to be arbitrary), Nov. 19, 2010, at ¶10.

The prominent professor and human rights lawyer Teng Biao was disappeared from February 19 to April 29. He has not communicated with the outside world since his release. We have no idea what happened to him during his disappearance, or the current state of his mental and physical health. It is more likely than not, however, that he was mistreated and warned not to communicate anything about what happened to him during his disappearance. A month and a half before he disappeared for 70 days, Teng Biao published an op-ed in the *Wall Street Journal*, titled "A Hole to Bury You," in which he described beatings and threats he received during a brief encounter with China's domestic security police (*guobao*) last December, after attempting to visit the home of another human rights lawyer, Fan Yafeng.¹⁴ An officer threatened that they would treat him as they treat Falun Gong practitioners (*i.e.*, with torture), and then one police officer said to another: "Why waste words on this sort of person? Let's beat him to death and dig a hole to bury him in and be done with it. How lucky we've got a place to put him away here." The police officer then addressed Teng Biao: "Think your family can find you if you're disappeared? Tell me, what difference would it make if you vanished from Beijing?"

Few of those who have been released after being detained or disappeared during the current crackdown have spoken publicly about being tortured or mistreated while in the custody of the police or other government agents, for fear of reprisals. There are unconfirmed reports of beatings and other cruel and humiliating treatment. One confirmed reports involves Jin Guanghong, a lawyer based in Beijing, who disappeared for approximately 10 days in April. He was held in a psychiatric hospital for part of this time, where he was tied to a bed, subjected to beatings, and forcibly medicated.¹⁵

3. The Silencing of Human Rights Lawyers

Another alarming feature of the Jasmine crackdown is the targeting of China's brave and beleaguered human rights lawyers. The harassment and persecution of human rights lawyers by Chinese authorities is by no means new; what is new, however, is the scope and prevalence of the use of extralegal and criminal methods to persecute and intimidate human rights lawyers. Teng Biao notes in his *Wall Street Journal* op-ed that when he began to challenge the domestic security police officer's conduct at Fan Yafeng's home, citing various Chinese laws, the officer retorted: "Don't talk so much about the law with me. Do you know where we are? We are on Communist Party territory!" Law, in other words, is subordinate to the Party and its policies.

In addition to the examples of disappearances and torture of human rights lawyers mentioned above, at least one prominent human rights lawyer has been criminally detained during the Jasmine crackdown.¹⁶ On April 7, Ni Yulan, a Beijing-based human rights lawyer

¹⁴ Teng Biao, "A Hole to Bury You," *Wall Street Journal* (Opinion Asia), December 28, 2010, available at <http://online.wsj.com/article/SB10001424052970203731004576045152244293970.html>. A fellow Beijing activist who is described in the article, Zhang Yongpan, has been missing since April 14.

¹⁵ Chinese Human Rights Defenders, <http://chrinet.org/2011/04/28/china-human-rights-briefing-april-20-27-2011/>.

¹⁶ See China Human Rights Lawyers Concern Group web site for a list of human rights lawyers disappeared, detained, or under residential surveillance as of May 6, 2011, available at <http://www.chrlcg-hk.org/>

and housing rights activist, who has been detained and tortured multiple times by the police over the past decade, was taken into custody, along with her husband Dong Jiqin, for “creating a disturbance.”¹⁷

During the summer of 2009, many Chinese human rights lawyers faced the prospect of losing their licenses during the “annual assessment and registration” process for the renewal of lawyers’ licenses.¹⁸ A group of lawyers issued a statement at the time declaring that “this was full-scale repression of rights defense lawyers to an unprecedented degree.”¹⁹ After much delay, most of the lawyers did eventually get their licenses renewed in 2009. But now, in 2011, we can only wonder what the silenced human rights lawyers in China would say about their current situation.

RECOMMENDATIONS

1. The Administration is to be commended for speaking out more forcefully on China’s human rights situation during the past several weeks, beginning with the run-up to the US-China Human Rights Dialogue in Beijing in late April, through the Strategic and Economic Dialogue that concluded in Washington earlier this week. I would urge Administration officials and Members of Congress to continue raising human rights concerns in their meetings and dialogues with their Chinese counterparts, and specifically to continue to raise individual cases of the disappeared and those detained or imprisoned for exercising their fundamental human rights, such as Nobel Peace Prize Laureate Liu Xiaobo, and the activists and lawyers discussed in this statement.
2. The next round of the U.S.-China Legal Experts Dialogue will be held in Washington, D.C. in June. The U.S. delegation should raise specific cases of lawyers who have been disappeared, detained, or subjected to unlawful home confinement during the Jasmine crackdown, and before. Still missing lawyers include Gao Zhisheng, Li Tiantian, and Liu Shihui; Chen Guangcheng and Zheng Enchong are still unlawfully confined to their homes. Inquire after Teng Biao, Jiang Tianyong, Li Fangping and other human rights lawyers who were recently disappeared, released, but who now are silent. Dialogue participants should address a fundamental issue that is recognized by prominent legal academics and others in China-- that rule of law in China is regressing.

¹⁷ China Aid, “Beijing Human Rights Lawyer Charged with ‘Creating a Disturbance,’” April 16, 2011 <http://www.chinaaid.org/2011/04/beijing-human-rights-lawyer-ni-yulan.html>

¹⁸ For more information on these events, please see the CECC Annual Report 2009, pp. 232-236, and the materials (including submissions by several Chinese human rights lawyers) available at the web page for the CECC roundtable “China’s Human Rights Lawyers: Current Challenges and Prospects” (July 10, 2009) <http://www.cecc.gov/pages/roundtables/2009/20090710/index.php>. In addition, China Human Rights Lawyers Concern Group has published a book on the lawyers, titled A Sword and a Shield: China’s Human Rights Lawyers (ed. by Stacy Mosher and Patrick Poon (2009).

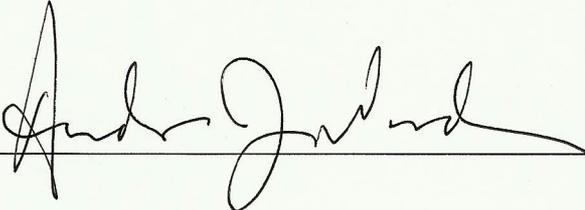
¹⁹ Quoted in CECC Annual Report 2009, at 233.

3. Continue to support the U.S. State Department's International Visitors Leadership Program and other programs that bring Chinese human rights lawyers, legal advocates, and scholars to the United States for study, exchange, and dialogue.
4. The U.S. should ask China to issue invitations for country visits to the UN Working Group on Enforced or Involuntary Disappearances, the UN Special Rapporteur on the Situation of Human Rights Defenders, and the UN Special Rapporteur on the Independence of Judges and Lawyers.
5. Increase support for civil society actors in China, including training opportunities in the U.S. in non-profit management, advocacy, and Internet security; the initiatives underway at the State Department with respect to Internet freedom and security should be supported and expanded.
6. Strengthen U.S. involvement in the UN Human Rights Council, and use the Council and other multi-lateral fora as additional mechanisms by which to press the Chinese government to adhere to its international obligations and commitments with respect to human rights.

United States House of Representatives
Committee on Foreign Affairs

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Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee require the disclosure of the following information. A copy of this form should be attached to your written testimony and will be made publicly available in electronic format, per House Rules.

1. Name: Andrea Joan Worden	2. Organization or organizations you are representing: None
3. Date of Committee hearing: May 13, 2011	
4. Have <u>you</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5. Have any of the <u>organizations you are representing</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. If you answered yes to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
	
7. Signature:	

Please attach a copy of this form to your written testimony.