

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

www.lrwc.org – lrwc@portal.ca – Tel: +1 604 736 1175 – Fax: +1 604 736 1170
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Thursday, January 28, 2016

Xi Jinping
General Secretary, Chinese Communist Party (CCP)
The State Council General Office
2 Fuyoujie
Xichengqu
Beijingshi 100017
People's Republic of China

Guo Shengkun
Minister of Public Security
No.14, Donchang'anjie,
Dongchengqu, Beijing 100741
People's Republic of China
Email: gabzfwz@mps.gov.cn

Attention CCP General Secretary Xi Jinping and Minister of Public Security Guo Shengkun

Re: Arbitrary Conviction and Sentencing of Mr. Shu Xiangxin

Lawyers' Rights Watch Canada (LRWC) is deeply concerned by the unlawful arrest, conviction and sentencing Mr. Shu Xiangxin. Mr. Shu Xiangxin is a lawyer and human rights advocate, and the Director of the Shandong Xuzhou Law Firm. Mr. Shu is believed to have been targeted by the Government of China (China) in reprisal for his human rights advocacy on behalf of people who had lost land in Guan County, and his defense of people charged with extortion for trying to seek compensation for state abuses.

LRWC condemns the treatment to which Mr. Shu has been subjected to at the hands of state officials and calls for his immediate release.

BACKGROUND

Mr. Shu was arrested on 2 January 2016 by the Jinan police in Shandong province and taken to No. 2 Detention centre. He was detained in custody and denied access to legal counsel for two days. During the 4 January 2016 meeting with his lawyers, Mr. Shu signed a statement that while in detention, he had been handcuffed, severely beaten, deprived of food and water and prevented from using a toilet. He also reported having been handcuffed to a staircase for seven hours and having lost consciousness. Mr. Shu's lawyers Cai Ying and Li Fangping reported seeing visible injuries on Mr. Shu's face and wrists.

On 8 January 2016, Mr. Shu was taken before the Licheng District First Instance Criminal Court in Jinan. After a 30-minute interval, the court pronounced him guilty of defamation, sentenced

him to a 6-month jail term and revoked his license to practice law. Court officials refused to allow any opportunity for Mr. Shu to present a defense and his lawyers were not allowed in the courtroom. Lawyer Cai Ying told reporters, "They wouldn't let the defence attorney in there, and they wouldn't allow them to bring in all the case files...The lawyers lodged a complaint with the court, so they wouldn't let me go in, and they just went ahead with the trial and sentencing."

Witnesses to the court proceedings reported that Mr. Shu's physical condition had noticeably deteriorated since his arrest; he was so weak that he was unable to walk into the court room without assistance, was suffering from tinnitus and having difficulty hearing the proceedings. A medical examination performed days before the court proceeding had determined that Mr. Shu was suffering from thrombosis, muscle atrophy, and an effusion on his brain.

VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS

The arrest and detention of Mr. Shu Xiangxin violates China's international law obligations to ensure rights guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR); the *Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (UNCAT); the *Universal Declaration of Human Rights* (UDHR); the Declaration on Human Rights Defenders (Declaration) and the Basic Principles on the Role of Lawyers (Basic Principles). Internationally protected rights and fundamental freedoms that China is violating by the arrest, conviction, sentencing and treatment include Mr. Shu Xiangxin rights to:

1. Liberty as guaranteed by UDHR art. 3, ICCPR art. 9.1;
2. Pre-trial release as guaranteed by UDHR art. 3, 8, 9, ICCPR art. 9.3;
3. The presumption of innocence as guaranteed by UDHR art. 11, ICCPR art. 14.2;
4. Freedom from arbitrary arrest and detention as guaranteed by UDHR art. 9, ICCPR art. 9.1;
5. Timely access to a lawyer as guaranteed by ICCPR art. 14.3 (b), the Basic Principles, art. 8;
6. Access to a competent, independent and impartial tribunal to determine rights, including rights to release and remediation of rights violations, as guaranteed by UDHR art. 10, 11, ICCPR art. 14, 9.3, 9.5;
7. Be informed promptly and in detail of the nature and cause of any charges against him as guaranteed by UDHR art. 11.1, ICCPR art. 9.2, 14.3 (a);
8. The time and facilities to communicate with counsel and prepare a defence as guaranteed by ICCPR art. 14.3 (b);
9. Freedom from torture and cruel, inhuman and degrading punishment or treatment, guaranteed by ICCPR, art. 7, 10, CAT art. 1, and UDHR, art. 5; and,
10. Access to timely and competent medical care and treatment as guaranteed by ICCPR art. 6, 7 and 10.

As a member of the United Nations and a signatory to the ICCPR and UNCAT, China is obligated to ensure the enjoyment by all of the rights and freedoms recognized by the UDHR and guaranteed by the ICCPR and UNCAT, including rights identified above as having been violated. As a member of the Human Rights Council, China has a heightened duty to "uphold the highest standards in the promotion and protection of human rights" and "fully cooperate with the Council..."¹

¹ China Change, *Relatives of Recently Disappeared Lawyers and Activists Write a Letter to China's Minister of Public Security*, 29 August 2015.

The UN Human Rights Committee (HR Committee) has established that the ICCPR Articles 7, 8, and 14 guarantee detainees the right to consult a lawyer from the moment of arrest.² The HR Committee also concluded that domestic laws that allow for incommunicado detention violate Articles 7, 9, and 10 of the ICCPR.³ The Special Rapporteur on torture stated similarly that “all detainees should be effectively guaranteed the ability to challenge the lawfulness of their detention before an independent court ... and have an effective right to have access to legal counsel.”⁴ The importance of timely access was emphasized by the European Court of Human Rights, when the Court determined that denial by state authorities of a detained person’s access to counsel for a period of 48 hours violated and could irretrievably prejudice the accused’s right to a fair trial.⁵

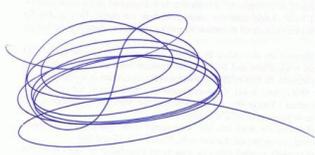
The incommunicado detention Mr. Shu was followed by a total denial of his right to consult with and be represented by a lawyer and to prepare and present a defense. Mr. Shu was also denied the notice of the specific allegations against him and of any evidence supported those allegations required by the ICCPR.

The conviction, sentencing and revocation of the licence to practice law of Mr. Shu were determined and imposed arbitrarily and without due process and contravene international law human rights law obligations binding on China. As such the conviction, sentencing and revocation of licence to practice law are illegitimate and cannot justify his detention.

LRWC calls on China to immediately:

1. Release Mr. Shu Xiangxin unconditionally;
2. Ensure that the conviction, sentence and revocation of licence to practice law of Mr. Shu Xiangxin are set aside;
3. Restore a valid licence to practice law to Mr. Shu Xiangxin;

Sincerely,



Gail Davidson
Executive Director, LRWC



Clive Ansley
Barrister and Solicitor
China Monitor, LRWC

² Human Rights Committee, Consideration of Reports Submitted by State Parties under Article 40 of the CCPR/CO/84/TJK (18 July 2005) para 17. See also Human Rights Council, Implementation of the General Assembly Resolution 60/251 of 15 March 2006 Entitled Human Rights Council, forth sess., A/HRC/4/33/Add.3, 5 January 2007, at para 72. See also the General Assembly, Promotion and Protection of All Seventh sess., A/HRC/7/3/Add.4, 22 November 2007 at para 75.

³ Human Rights Committee, Consideration of reports submitted by state parties under Article 40 of the Covenant concluding observations of the Rights Right Committee Switzerland, 73rd sess., CCPR/CO/73/CH (12 November 2001) at para. 14.

⁴ Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, A/HRC/7/3/Add.3, 1 October 2007 at para 90.

⁵ *Magge v. UK*, ECtHR, 6 June 2000 at para. 44

Copied to:

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers
E-mail: SRindependenceJL@ohchr.org
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
Geneva 10 Switzerland

Mr. David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Palais des Nations
CH-1211 Geneva 10, Switzerland
Email: freedex@ohchr.org

Mr. Michel Forst
Special Rapporteur on the situation of human rights defenders
Email: urgent-action@ohchr.org

Working Group on Arbitrary Detention
Email: wgad@ohchr.org

Mr. Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association
Palais des Nations
CH-1211 Geneva 10, Switzerland
Email: freeassembly@ohchr.org

Ms. Rosemary McCarney Canadian Ambassador
Permanent Representative to the United Nations and the Conference on Disarmament in Geneva
in 2015
genev-gr@international.gc.ca.

The Honourable Stéphane Dion
Canadian Minister of Foreign Affairs and President of the Cabinet Committee in Environment,
Climate Change and Energy.
stephane.dion@parl.gc.ca