

(Translated from Chinese)

Receipt is hereby acknowledged of the letter regarding the case of Ms. Li Yan, dated 8 February 2013, addressed jointly by the United Nations Human Rights Council's Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences (UA G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24) G/SO 214 (89-15) CHN 2/2013). The Chinese Government has carefully investigated the matter referred to in the letter, and wishes to make the following reply:

1. Regarding the trial of Ms. Li Yan

The allegations contained in the letter to the effect that Ms. Li's case had been dismissed by the Supreme People's Court and that she was at risk of imminent execution are inconsistent with the actual situation. Ms. Li was tried in accordance with the law in the people's courts of first and second instance and was sentenced to death; the case was then submitted to the Supreme People's Court for review of the death penalty, again in accordance with the law. The case is currently still under review by the high court. On the basis of its review, and using the facts as evidence and the law as its criterion, the high court will independently and fairly hand down its verdict as to whether or not the facts of the case were clear, that the evidence was truthful and complete, that the conviction was correct, that the sentence was appropriate, and that the trial procedures were lawful.

2. Regarding the abuse of Ms. Li and the investigation of that abuse

Regarding the view presented by defence counsel that Ms. Li had been subject to long-term abuse by her husband, the courts of first and second instance both undertook investigations (including interrogating Ms. Li, interviewing witnesses, and taking written statements), and subjected the evidence so gathered to further examination during the court proceedings themselves. With regard to the issue raised in the letter that Ms. Li had been subject to domestic violence for an extended period, the Supreme People's Court is still in the process of carrying out its investigation. As for the letter's allegation that [Ms. Li's husband] Tan Yong had cut off one of her fingers, the investigations carried out by the courts of first and second instance show that the allegation does not correspond with the facts; the entry in Ms. Li's own journal describing the "finger severing" recorded that she had cut the finger off herself out of dissatisfaction at Tan Yong's associations with other women. This particular evidence has been corroborated by a witness, establishing that the "finger severing" was not done by Tan Yong.

With regard to the letter's allegation that Ms. Li was unable to obtain protection following the domestic violence against her and that the abuse was not investigated or evidence taken, the investigations carried out by the courts of first and second instance again indicate that the allegation does not accord with the facts. Ms. Li paid one visit each to the public security authorities and to the local branch of the Women's Federation to report that her husband was abusing her. At the public security unit, when the public security personnel indicated that they were preparing to call in her husband and were on the point of taking action, Ms. Li said, on the spot, "There's no need [to do that]." In view of this, and taking into account the fact that Ms. Li's marriage was the second one for both her and her husband, the public security authorities thereupon advised her to either go to court to sue for divorce or provide the Women's Federation with an account of the situation. When the Women's Federation received Ms. Li, they advised her first to request mediation from the neighbourhood committee, but Ms. Li did not go to the neighbourhood committee. The Supreme People's Court will carry out further investigations on this point.

3. Regarding the issue of the safeguarding of Ms. Li's right to mount a defence

The letter's allegation that Ms. Li did not receive adequate legal assistance or defence is also not consistent with the facts. Chinese courts consistently attach great importance to safeguarding the exercise of the right to defence by persons accused of crimes. Following Ms. Li's criminal detention, her mother engaged an attorney to act in her defence throughout the trial of first instance; this attorney was not assigned to the case by the Government. Because Ms. Li and her relatives had not engaged another defence attorney at the beginning of the second-instance trial, the people's court thereupon appointed one for her in accordance with the law. During the trial proceedings, both of the aforementioned attorneys argued for clemency and a reduction of penalty for Ms. Li; these arguments were accorded due respect by the courts of first and second instance. For the death-penalty review by the Supreme People's Court, Ms. Li's relatives also engaged a defence attorney, who submitted a written statement of defence on her behalf. Currently, the Supreme People's Court has made arrangements to meet with the defence attorney and hear his views in person. These actions are in keeping with the provisions of Chinese law and are also consistent with the provisions of international human rights law regarding fair trials and due process.

4. Regarding the non-appearance of witnesses in court and the question of admissibility of defence evidence

The letter's allegations that defence witnesses, including Ms. Li's younger brother, were not invited to testify in court, and that the court failed to attach importance to the defence's evidence, such as relevant records from the public security authorities and the Women's Federation, as well as photographs of Ms. Li's injuries, are also inconsistent with the facts. During the trials of first and second instance, all evidence, including that of the defence, was methodically presented and evaluated by the people's court in accordance with the law, and decisions regarding admissibility were made on the basis of a comprehensive review of all the evidence in the case. In accordance with the law, the public security authorities took evidentiary statements from major witnesses including Ms. Li's mother, daughter, elder sister and neighbours during the pretrial investigation stage; a deposition was not taken from Ms. Li's younger brother because he was elsewhere in the country at the time. The court of first instance even invited several of Ms. Li's neighbours to testify in court, but all of them declined. During the trial proceedings, the written testimonies of the aforementioned witnesses, as well as all the evidence, including that of the defence, were methodically evaluated by the court of first instance in accordance with Chinese law; the first- and second-instance courts both made references to this evidence when handing down their verdicts.

5. Regarding Ms. Li's mental state at the time of the murder

The letter's allegation that the people's courts failed to attach a high degree of importance to Ms. Li's mental state at the time of the murder is again inconsistent with the facts. During the pretrial investigation, a specialist engaged by the public security authorities conducted a forensic mental-illness examination of Ms. Li, and determined that she was sane at the time of the murder and therefore fully capable of assuming criminal responsibility. When this determination was evaluated in the court of first instance, neither Ms. Li nor her defence attorney raised an objection to it.

6. Regarding the applicability of the "family disputes" clause to sentence reduction

The letter further alleges that sentence reduction by reason of "family disputes" was not applied in Ms. Li's case. According to the (Proposed) Sentencing Guidelines for People's Courts issued by the Supreme People's Court in 2009, this concept is applicable to the sentencing of 15 categories of cases subject to fixed terms of imprisonment, such as intentionally causing injury; voluntary manslaughter is not included among them. Under

China's policy of tempering justice with mercy in criminal matters, appropriate leniency is to be exercised in the punishment of crimes resulting from aggravated marital or familial disputes; this is the judicial embodiment of China's respect for and safeguarding of human rights. However, in view of the cruelty of the method by which Ms. Li killed her husband, and the fact that she dismembered, cooked and dumped his corpse after killing him, provoking an intense reaction from the victim's side, the courts of first and second instance considered the entirety of the facts, nature, circumstances and harm to society of the murder Ms. Li committed in weighing the penalty, and handed down the death sentence in accordance with the law. The Supreme People's Court will conscientiously review the application of the law by the courts of first and second instance, and will render an independent and fair verdict in accordance with the law.

The Chinese Government respectfully requests that the foregoing be reproduced in its entirety in the relevant United Nations documents.

联合国人权理事会法官和律师独立性、任意处决问题、酷刑问题和针对妇女暴力问题特别报告员关于李彦案的来函[UA G/SO 214/(3-3-16) G/SO 214 (33-27) G/SO 214 (53-24) G/SO 214 (89-15) CHN 2/2013]收悉。中国政府对来函所涉情况做了认真调查，现答复如下：

一、关于李彦案审判情况

来函所谓李彦案已被最高人民法院驳回，即将对李彦执行死刑的说法，与实际不符。一、二审人民法院经依法审理，判处被告人李彦死刑，并依法报请最高法院复核。目前，该案仍在最高法院复核之中。最高法院将根据审查的情况，以事实为依据，以法律为准绳，独立公正地作出裁判，确保案件的事实清楚，证据确实、充分，定罪准确，量刑适当，审判程序合法。

二、关于李彦受虐及其调查的情况

关于辩方所提李彦长期受其丈夫虐待的辩护意见，一、二审人民法院均进行了调查（包括讯问李彦、询问证人、提取书证），并在庭审中对上述证据进行质证。关于来函指称李彦长期遭受家暴的问题，最高人民法院正在调查核实。至于来函就谭勇切去李彦一个手指的指称，经一、二审调查核实，该指称与事实不相符，李彦本人的日记记载，李彦“断指”系其不满谭勇与其他女性交往而自行砍下，此节得到一名证人的证实，故“断指”并非谭勇所致。

关于来函就李彦遭受家暴后没能得到保护且对受虐情况不予调查取证的指称，一、二审调查核实，该指称与事实不相符。李彦曾先后到公安机关和当地妇联各报案一次，称受到丈夫虐待。在公安机关，公安人员表示准备传唤其丈夫

并采取行动时，李彦当场表示“不需要”。见此情况，考虑到李彦和其丈夫均系再婚，公安机关遂建议李彦到法院起诉离婚或向妇联反映情况；妇联在接待李彦时，建议先找社区进行调解，但李彦未去社区。对此，最高人民法院将进一步核实。

三、关于李彦辩护权保障问题

来函就李彦未得到足够法律援助和辩护的指称，亦与事实不相符。中国法院始终高度重视保障被告人行使辩护权。李彦被刑事拘留后，其母委托一名律师担任辩护人，直至一审结束，该律师并非由政府指定。进入二审，因李彦及其近亲属未再委托辩护人，人民法院遂依法指定一名律师为李彦辩护。上述律师在审理过程中均提出了对李彦从轻、减轻处罚的辩护意见，一、二审法院对这些意见均给予足够的尊重。在最高人民法院复核阶段，李彦的近亲属也委托了辩护律师，该律师已提交了书面辩护意见。目前，最高人民法院已做出安排，准备约见辩护律师，当面听取其意见。这些做法符合中国法律的规定，也与国际人权法关于公正审判和正当程序的规定相一致。

四、关于证人未出庭和辩方证据采信的问题

关于来函就包括李彦的弟弟在内的辩方证人未被邀出庭作证，且公安机关和妇联的有关记录、李彦伤情照片等辩护证据未得到法庭重视的指称，与事实不相符。在一、二审中，人民法院对本案所有证据包括辩护证据，都依法当庭组织举证和质证，并在全面审查在案证据的基础上作出了是否采信的决定。在侦查阶段，公安机关依法向李彦的母亲、女儿、姐姐及邻居等重要证人取过证，李彦的弟弟因在外地，未向其提取证言。一审法院还曾邀请李彦的几位邻居出庭作

证，但均遭拒绝。在庭审过程中，一审法院依照中国法律对上述证人的书面证言以及包括辩护证据在内的全部证据组织了质证，一、二审法院作出裁判时对这些证据均予以注意。

五、关于李彦杀人时精神状态的问题

关于来函就人民法院未高度重视李彦杀人时精神状态的指称，与事实不相符。在侦查阶段，公安机关委托鉴定人员对李彦进行了司法精神病鉴定，确认其杀人时精神正常，有完全刑事责任能力。对此鉴定意见，一审法院进行了庭审质证，李彦及其辩护律师当庭均不持异议。

六、关于“家庭纠纷”减刑条款的适用问题

关于来函指称对李彦案没有适用“家庭纠纷”减刑条款的问题。根据最高人民法院2009年发布的《人民法院量刑指导意见（试行）》，该意见适用于判处有期徒刑的故意伤害等15类案件，故意杀人案未列其中。根据我国宽严相济刑事政策，对于因婚姻、家庭等民间矛盾激化引发的犯罪，应酌情从宽处罚，这是我国尊重和保障人权的司法体现。但是，鉴于李彦杀夫的手段残忍，且在杀人后分尸、烹尸、抛尸，被害方又反应特别强烈，一、二审法院在量刑时综合考虑李彦杀人的事实、性质、情节和对社会的危害程度，依法作出了死刑裁判。对一、二审法院的法律适用情况，最高人民法院将认真审查，并依法独立公正作出裁判。

中国政府谨请将上述内容全文载入联合国有关文件中。