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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human rights and with reference to the joint communication [AL CHN 4/ 2021] dated by 28 April 2021, has the honour to transmit herewith the reply by the Chinese Government.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Office of the High Commissioner for Human Rights
GENEVA

(Translated from Chinese)

Receipt is hereby acknowledged of communication AL CHN 4/2021 of 28 April 2021, from the Special Rapporteur on the situation of human rights defenders, the Working Group on Arbitrary Detention, 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on discrimination against women and girls, of the United Nations Human Rights Council. The Chinese Government wishes to respond with the following:

1. Measures taken by the Chinese Government to ensure that lawyers carry out their work in a safe and favourable environment

There are more than 520,000 lawyers in China. They are an all-around important force in ensuring that the country is governed in accordance with the law. China has always attached a great deal of importance to the work of ensuring the right of lawyers to practise and has made the best possible use of their role in promoting the establishment of the rule of law. Whether in its legislation or judicial practice, China fully protects lawyers in the practice of their profession in accordance with the law. The Law of the People's Republic of China on Lawyers clearly stipulates that "lawyers are protected by law when practising in accordance with the law, and no organization or individual may infringe upon the legitimate rights and interests of lawyers". In September 2015, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued Provisions on the Legal Protection of Lawyers' Practising Rights, thus putting forward comprehensive rules guaranteeing the protection of lawyers' rights in litigation to carry out interviews, examinations and investigations and to collect evidence, to enter into debate and to put forward a defence. In April 2018, the Supreme People's Court and the Ministry of Justice issued a circular establishing requirements to protect the rights of lawyers in trial proceedings and to defend the profession. In October 2019, the Ministry of Public Security and the Ministry of Justice issued a circular requiring detention centres to arrange for lawyers to meet criminal suspects and defendants in a timely manner, in accordance with the law, and to fully guarantee the right of lawyers to hold interviews. In addition, the Chinese Government has also attached importance to giving full play to the function of lawyers in the judicial guarantee of human rights. In October 2018, the Supreme People's Court and the Ministry of Justice carried out a pilot involving full coverage of the defence in criminal cases. For cases where defendants did not hire counsel at the trial stage, the people's court informed legal aid institutions to assign counsel to defend them; it ensured that defendants in criminal cases were able to have access to an effective defence from a lawyer, in practice strengthening judicial guarantees of human rights and advancing the cause of justice in the judicial system.

2. Provisions of the Criminal Law on "ringleaders"

According to article 97 of the Criminal Law, in the Criminal Law, "ringleader" refers to criminals who perform a function in organizing, plotting or directing criminals or in bringing them together.

3. On whether the persons mentioned in the communication received legal aid during the period between their arrest and trial

During the case trials, the Chinese courts fully ensured respect for the procedural rights of the defendants and their counsel. Article 252 of the Criminal Procedure Law stipulates that the parties, their legal representatives and close relatives may appeal to the people's court or the people's procuratorate against judgments or rulings that have entered into legal effect.

Information on the cases mentioned in the letter will be provided subsequently.



联合国人权理事会“人权卫士”问题特别报告员、任意拘留问题工作组、强迫失踪问题工作组、言论自由问题特别报告员、健康权问题特别报告员、法官和律师独立性问题特别报告员、酷刑问题特别报告员、消除针对妇女和女童歧视问题工作组 2021 年 4 月 28 日来函【AL CHN 4/2021】收悉。中国政府对来函答复如下：

一、中国政府为保证律师在安全有利环境中开展工作所采取的措施

中国有 52 万多名律师，这是全面依法治国的一支重要力量。中国始终高度重视保障律师执业权利工作，充分发挥律师在推进法治建设中的作用。无论是立法，还是司法实践中，中国都对律师依法执业给予充分保障。中国《律师法》明确规定，“律师依法执业受法律保护，任何组织和个人不得侵害律师的合法权益”。2015 年 9 月，最高人民法院、最高人民检察院、公安部、国家安全部、司法部联合印发《关于依法保障律师执业权利的规定》，就保障律师会见、阅卷、调查取证以及辩论辩护等各项诉讼权利作出全面规定。2018 年 4 月，最高人民法院、司法部印发通知，就保障律师庭审诉讼权利，尊重律师等提出要求。2019 年 10 月，公安部、司法部印发通知，对看守所依法及时安排律师会见犯罪嫌疑人、被告人，充分保障律师会见等提出要求。此外，中国政府还注重发挥律师在人权司法保障中的职能作用。2018 年 10 月，最高人民法院、司法部开展刑事案件律师辩护全覆盖试点工作，对于审判阶段被告人没有委托辩护人的案件，由

人民法院通知法律援助机构指派律师为其提供辩护，保障刑事案件被告人能够获得律师有效辩护，切实加强人权司法保障，促进司法公正。

二、《刑法》关于“首要分子”的规定

根据《刑法》第97条规定，刑法所称首要分子，是指在犯罪集团或者聚众罪犯中起组织、策划、指挥作用的犯罪分子。

三、关于来函所涉人员自逮捕至审判期间是否获得法律援助

在案件审理过程中，中国人民法院充分保障了各被告人及其辩护人的诉讼权利。《刑事诉讼法》第252条规定，当事人及其法定代理人、近亲属，对已经发生法律效力的判决、裁定，可以向人民法院或者人民检察院提起申诉。

来函提及的个案情况将随后提供。