

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Chair-Rapporteur of 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 situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16)
CHN 1/2013

17 January 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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 the independence of judges and lawyers pursuant to Human Rights Council resolutions 15/18, 16/16, 16/4, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the reported 'residential surveillance' imposed on Mr. **Zhu Chengzhi**.

Mr. Zhu Chengzhi has repeatedly called on the authorities for an investigation into the allegedly suspicious death of a labour rights defender, Mr. Li Wangyang. Mr. Li Wangyang was found dead on 6 June 2012 in his room at Daxiang District People's Hospital. This was reportedly followed by the circulation on the internet of photos of the body, indicating that though ostensibly a suicide, the scene pointed to suspicious circumstances. It was alleged that the human rights defender's death has never been properly investigated by the authorities of Shaoyang in Hunan province.

Soon after this incident, on 8 June 2012, Mr. Zhu Chengzhi was reportedly arrested by national security officers in Shaoyang city, Hunan province, and sentenced to 10 days administrative detention. It has been reported that following this detention, he was then transferred to a detention facility and officially arrested by Shaoyang police on 25 July, on suspicion of 'subversion of state power'. Sources report that his wife was not notified of this arrest until 9 August, and that Mr. Zhu Chengzhi was kept in detention as a result but never officially prosecuted.

On 11 July 2012, a joint urgent appeal was sent to your Excellency's Government outlining the concerns that had arisen regarding the death of Mr. Li Wangyang. In this communication, to which we received a reply from your Excellency's Government on 30 October 2012, the administrative detention to which Mr. Zhu Chengzhi had allegedly been sentenced was also raised.

It has been reported that on 25 December, Mr. Zhu Chengzhi's wife was informed by the Shaoyang Public Security Bureau that the case had been transferred from the police to the People's Procuratorate of Shaoyang. As such, the police investigation having been completed, it would be possible for the prosecution service to prepare an official case against Mr. Zhu Chengzhi and for him to present a defense in court

According to the information received:

Mr. Zhu Chengzhi's legal representative went to the Shaoyang procuratorate on 4 January 2013. However, upon his arrival there he was reportedly informed that the case of Zhu Chengzhi had been transferred back to the Shaoyang police, in order for them to carry out further investigations.

When the lawyer then proceeded to the detention center where Mr. Zhu Chengzhi had been held, he was reportedly informed that the local Public Security Bureau had decided to place Mr. Zhu Chengzhi under six months 'residential surveillance'.

Sources report that on the same day, Mr. Zhu's sister received a notice from the local police informing her of the residential surveillance imposed on the human rights defender, though not mentioning the location where he is being held.

When Mr. Zhu Chengzhi's lawyer returned to the Public Security Bureau the next day, he was allegedly told that the human rights defender was being kept in a hotel. Nonetheless, he was allegedly informed that the hotel's location could not be given due to national security reasons.

Reportedly, this is the first instance in which Article 73 of the Criminal Procedure Law (2012 amendment) has been used to impose residential surveillance on a subject in a location other than their residence.

Concern is expressed at Mr. Zhu Chengzhi's alleged lack of access to his lawyer and relatives. Concern is further expressed that Mr. Zhu Chengzhi's detention in an undisclosed location may be linked to his peaceful activities in defence of human rights. Moreover, concern is expressed for Mr. Zhu Chengzhi's safety and physical and psychological integrity, given that his ongoing detention in an undisclosed location may put him at risk of enforced disappearance. Furthermore, deep concern is especially expressed at the wider implications of Article 73 of the Criminal Procedure Law (2012 amendment), specifically its provisions for residential surveillance to be imposed in a place other than the subject's home, without specifying the need to inform relatives or legal representatives of the subject of the location of their detention, in the light of the

possibility that it may put individuals at risk of enforced disappearance and could potentially expose them to other grave human rights violations as a result. The Working Group on enforced or involuntary disappearances has already expressed its concerns about the proposed amendments to the Criminal Procedure Law in a general allegation transmitted to the Government on 21 September 2011 (see A/HRC/19/58/Rev.1, paras. 99-104 and 123).

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Zhu Chengzhi is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to Mr. Zhu Chengzhi's alleged lack of access to his lawyer, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which was signed by your Excellency's Government on 5 October 1998, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular in principle 1, which states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings"; and principle 5, which states: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."

We would also like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 6.2 (Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited);
- article 7 (No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances);

- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest).

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the UDHR which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Zhu Chengzhi in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Zhu Chengzhi, and has compensation been made available to his relatives?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any protective measures put in place to ensure the safety and physical and psychological integrity of Mr. Zhu Chengzhi and his family.
5. Please provide information concerning the legal grounds for the arrest and detention of Mr. Zhu Chengzhi and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.
6. Please provide information on the fate and whereabouts of Mr. Zhu Chengzhi.

7. Please provide detailed information on the measures adopted by your Excellency's Government to enable Mr. Zhu Chengzhi to exercise his rights under article 14(3) of the International Covenant on Civil and Political Rights.

8. Please explain what measures have been taken to guarantee that human rights defenders in China are able to carry out their legitimate and peaceful activities in defense of human rights without fear of judicial harassment or other restrictions.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Zhu Chengzhi are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Olivier de Frouville
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

-

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

