

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates 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; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 217/1 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
CHN 4/2012

15 May 2012

Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/16, 16/4, 16/5, 17/2, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged threats and harassment against Mr. **Chen Guangcheng** and his family and the alleged arbitrary detention or enforced disappearance of a number of his relatives and supporters in the wake of his escape from alleged extralegal house arrest. Mr. Chen Guangcheng is a human rights lawyer who has denounced alleged human rights violations carried out by the authorities of Linzi city, Shangdong province, in relation to birth planning policies, including forced sterilisations and abortions. He has also been involved in the defence of the rights of farmers and people with disabilities.

On 24 August 2006, after taking legal action against Linyi city authorities for their alleged practice of forced abortions, Mr. Chen Guangcheng was sentenced to four years and three months imprisonment for allegedly "deliberately destroying property" and "organising a mob to disrupt traffic". On 9 September 2010, Mr. Chen Guangcheng was released from prison.

Mr. Chen Guangcheng was the subject of five previous communications sent to your Excellency's Government dated 19 September 2005, 31 October 2005, 7 April 2006, 14 July 2006, and 27 June 2007.

While we acknowledge receipt of replies from your Excellency's Government dated 12 December 2005, 14 June 2006 and 3 October 2006, we regret that we have not yet received a response to the communications of 31 October 2005 and 27 June 2007.

Ms. **Yuan Weijing** was the subject of a previous communication sent to your Excellency's Government on 23 May 2008. We thank your Excellency's Government for the reply transmitted on 7 July 2008.

Furthermore, Mr. Chen Guangcheng and Ms. Yuan Weijing were both the subjects of a previous communication sent to your Excellency's Government on 21 December 2006. We acknowledge receipt of the reply transmitted by your Excellency's Government on 14 February 2007.

Mr. **Jiang Tianyong** was the subject of three previous communications sent to your Excellency's Government dated 10 June 2009, 7 December 2010, and 3 March 2011. While we acknowledge receipt of the reply transmitted by your Excellency's Government on 21 August 2009, we regret that we have not yet received a response to the communications of 7 December 2010 and 3 March 2011.

According to the information received:

Since his release from prison in September 2010, Mr. Chen Guangcheng and his family have reportedly been subjected to extralegal house arrest by local authorities at their home in Dongshigu village, Shuanghou Township, Yi'nan county, Linyi city. Reportedly, on 22 April 2012, Mr. Chen Guangcheng escaped from house arrest and fled to Beijing.

In the days following his alleged escape, it is reported that Mr. Chen Guangcheng released a video in which he expressed the fear that his family would be subjected to "extreme retaliation" for his escape. He is also reported to have called on the authorities to investigate his extralegal house arrest and the other alleged human rights violations against him and his family, including several alleged beatings suffered by him and his wife and the alleged denial of access to medical treatment.

During the late evening of 26 April 2012, there was an altercation at the home of Mr. **Chen Guangfu**, the brother of Mr. Chen Guangcheng, when a group of men allegedly including local officials and led by the town mayor and party secretary tried to break in. Reportedly, Mr. Chen Guangfu was taken from his home and placed in detention. According to reports, he was subsequently released, and it is alleged that he has been forbidden from leaving his village and that his mobile phone has been confiscated. Sources indicate that his son, Mr. **Chen Kegui**, managed to repel the attack by using knives in the defence of himself and his family. It is reported that he has since been arrested and he is allegedly being detained in the Yinan County Detention Centre.

According to reports, on 28 April 2012, Mr. **Chen Guangcun** and his son Mr. **Chen Hua**, both cousins of Mr. Chen Guangchen, were arrested. It is unclear whether or not they remain in custody. Their fate and whereabouts allegedly remain unclear.

Reports indicate that on 2 May 2012, Mr. Chen Guangcheng left the Embassy of the United States of America in Beijing, where he had allegedly taken refuge for six days, and was escorted by US officials to Chaoyang hospital, as designated by the Chinese authorities. It is reported that he had first received assurances from Chinese authorities that he and his family would be moved to a “safe location” within China and that the allegations of abuses perpetrated against them would be investigated.

Upon being reunited with his wife, Ms. Yuan Weijing, it is alleged that Mr. Chen Guangcheng learnt of the reprisals which had been taken against her following his escape. It is alleged that she was tied to a chair for two days and interrogated and threatened with physical violence. It is further alleged that seven security cameras have been installed in their home and that an electric fence has been erected around it.

Furthermore, on 3 May 2012, Mr. Jiang Tianyong, a human rights defender, reportedly tried to visit Mr. Chen Guangcheng in hospital. It is alleged that he was detained by police and badly beaten, before being released after approximately eight hours. It is reported that Mr. Jiang Tianyong is having hearing problems as a result of the beating.

Concern is expressed for the physical and psychological integrity of Mr. Chen Guangcheng and his family as well as for that of Mr. Jiang Tianyong. Further concern is expressed that the alleged acts may be directly related to the escape of Mr. Chen Guangcheng from his alleged extralegal house arrest.

We would 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 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, 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 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and

- 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.

We also would like to refer your Excellency's Government to 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 held at Havana, Cuba, from 27 August to 7 September 1990, in particular to the Principle 16, which provides that “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

In relation to the allegations according to which the fate and whereabouts of Messrs. Chen Guangcun and Chen Hua remain unclear, we would 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 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance).
- 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 should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to draw your Excellency's Government's attention to paragraph 7 (b) of Resolution 8/8 of the Human Rights Council, which stated that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture".

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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.

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 the above-mentioned persons 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 the alleged victims?
3. Please provide information concerning the legal grounds for the arrest and detention of Messrs. Chen Kegui, Chen Guangfu, Chen Guangcun, Chen Hua and Jiang Tianyong.
4. Please provide information on the fate and whereabouts of Messrs. Chen Guangcun and Chen Hua. If their fate and whereabouts are unknown, please provide the details of any investigation or other queries which may have been carried out. If no queries have been made, or if they have been inconclusive, please explain why.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to these cases.
6. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
7. Please indicate whether compensation will be provided to the victims or their families.

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.

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

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

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment