

Mandates of the Working Group on Arbitrary Detention; 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
CHN 10/2015:

29 October 2015

Excellency,

We have the honour to address you in our capacity as First Vice-Chair of the Working Group on Arbitrary Detention; 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 24/7, 25/2, 25/18, and 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of and targeting of human rights defender Mr. Chen Yunfei, and the residential surveillance of human rights lawyer Mr. Sui Muqing.

Mr. Chen Yunfei is a pro-democracy activist working to promote the compensation to victims of the Tiananmen Square protests of 1989. He has used print media, humour and "performance art" to advocate for human rights.

According to the information received:

On 21 March 2015, Mr. Chen Yunfei's apartment was broken into and some of his belongings were stolen. When reporting the case at the Wuhou Branch Jitou police station, Mr. Chen Yunfei was allegedly assaulted by a police officer, his belongings were confiscated and an unknown liquid was injected into his body.

On 25 March 2015, Mr. Chen Yunfei was arrested along with 20 other individuals by member of the Special Task Force in Chengdu. The arrest is believed to be linked to their participation in the commemoration of the victims of the Tiananmen Square protests of 1989 and no warrant was allegedly issued. The other individuals were released the same evening while Mr. Yunfei remained in detention.

On 26 March, Mr. Chen Yunfei was put under criminal detention.

On 30 March, Mr. Sui Muqing, Chen Yunfei's lawyer, went to the Xinjin County Public Security Bureau to ask for information on Mr. Chen Yunfei's whereabouts and was allegedly told that he had not been detained.

On 3 April, Mr. Chen Yunfei was charged with "inciting subversion of state power" and "creating a disturbance". On the same day, his family was given notice of his detention, after they had been searching for him for 10 days.

Mr. Chen Yunfei has been denied access to legal counsel since his arrest and remains in incommunicado detention. He is allegedly detained at Xinjin County Detention Center.

On 7 April and on 26 June, Mr. Sui Muqing, one of Mr. Chen Yunfei's lawyers tried to visit his client, but was denied access to him.

On 10 July, Mr. Sui Muqing was put under so-called 'residential surveillance at a designated location' on suspicion of "inciting subversion of state power". Mr. Sui Muqing's lawyer and family have not been able to talk to or visit him. He remains in incommunicado detention to this date.

Serious concern is expressed regarding the alleged assault against and the alleged arbitrary detention of Mr. Chen Yunfei, which appear to be as a result of his legitimate and peaceful human rights work, including exercising his legitimate rights to freedom of expression and peaceful assembly. Further concern is expressed at the alleged arbitrary arrest and detention on 'residential surveillance' of Mr. Sui Muqing, legal counsel representing Mr. Chen Yunfei, which appears to be directly related to his attempts to communicate with his client. Serious concern is also expressed regarding both of the individuals' physical and psychological integrity while in detention, in particular as they are being held incommunicado.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Chen Yunfei or the residential surveillance of Mr. Sui Muqing was arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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). Further, the right to have access to a lawyer is also enshrined in the Basic Principles on the Role of Lawyers. With regards to Mr. Sui Muqing, we would like to highlight that the Basic Principles also state that lawyers shall not suffer, or be threatened with, prosecution or other sanctions for any action taken in accordance with recognized professional duties (Principle 16) and that they shall not be identified with their clients or their clients' causes as a result of discharging their functions (Principle 18).

We would also like to refer your Excellency's Government to article 19 and 20 of the Universal Declaration on Human Rights that guarantee the rights to freedom of opinion and expression, and freedom of peaceful assembly, respectively.

We also wish to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

Furthermore, the Human Rights Council, in paragraphs 3 and 5 of its resolution 12/16, has specifically expressed its concern at the violation of human rights, including intimidation, harassment, threats of acts of violence and censorship against those who seek to promote their rights, including human rights defenders, and has called upon States to take all necessary measures to put an end to violations of these rights and bring those responsible to justice.

Similarly, the Human Rights Council, in its resolution 24/5, and in particular its operative paragraph 2, "reminds States of their obligation to respect and fully protect the rights of all individuals to associate and assemble peacefully, ... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

We would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156, which, "[r]eminds all States that prolonged incommunicado detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form

of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 person(s) in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information concerning the legal grounds for the detention and charges against Mr. Chen Yunfei. Please provide information on how these measures are compatible with international norms and standards, specifically related to the protections granted to human rights defenders.
3. Please provide information concerning the legal grounds for the detention under 'residential surveillance' and incommunicado of Mr. Sui Muqing and explain how these measures are compatible with international norms and standards mentioned above. Please explain in particular why Mr. Sui Muqing has not had access to a lawyer and his family.
4. 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 this case. If no inquiries have taken place, please explain why?
5. Please indicate what measures have been taken to ensure that human rights defenders in China, particularly those working to document and publicize human rights violations, are able to carry out their legitimate work in a safe and enabling environment without fear of reprisals, threats or acts of intimidation and harassment of any sort.
6. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the

physical and psychological integrity of those exercising this right is guaranteed.

7. Please indicate what measures have been taken to ensure that the physical and psychological integrity of human rights defenders in China is guaranteed.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Guevara
First Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
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freedom of opinion and expression

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