

**Mandates of 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; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
UA CHN 16/2019

19 August 2019

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 36/6, 34/18 and 34/5.

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 and enforced disappearance of human rights defender Ms. **Chen Jianfang**.

Ms. **Chen Jianfang** has been actively working on land and housing rights since her family lost their land to developers. She also previously campaigned for China to ratify the International Covenant for Civil and Political Rights (ICCPR), as well as for meaningful civil society participation in China's UPR process in 2013, for which a travel ban was imposed on her. In 2018, Ms. Chen received the Cao Shunli Memorial Award for Human Rights Defenders.

The imposition of travel bans on her and another human rights defender as an alleged act of reprisals for requesting to participate in China's UPR in Geneva was the subject of a joint communication sent by Special Procedures mandate holders to your Excellency's Government on 1 October 2013 (CHN 11/2013). While we would like to thank your Excellency's Government for the responses dated 7 January 2014 and 24 January 2014, we remain concerned given the new allegations below.

According to the information received:

Following the issuing of a travel ban against Ms. Chen in September 2013, she was detained, interrogated and placed under surveillance by officers from the Shanghai Public Security Bureau who reportedly monitored her online and offline activities.

On 4 November 2013, officers from the Shanghai Public Security Bureau entered the house of Ms. Chen's mother and seized a computer as well as educational

materials on human rights, without producing a search warrant. Ms. Chen was reportedly supposed to go to her mother's house on that day, but she never arrived. She was detained in an unknown location for at least 24 hours.

In October 2017, Ms. Chen was again prevented from travelling abroad, when she attempted to go to Ireland to attend a human rights forum.

On 14 March 2019, Ms. Chen published an essay online, to mark the fifth anniversary of the death in custody of a fellow human rights defender, calling for an independent investigation of the case.

Reportedly, on the morning of 20 March 2019, seven police cars were parked outside Ms. Chen's house. On that day, officers from Shanghai Public Security Bureau allegedly arrested Ms. Chen, without stating the reason for it, and took them to an unknown location. Ms. Chen's husband was released on bail on 3 April 2019, while Ms. Chen has since been detained in an unknown location. Their house is currently under surveillance by police officers in plain clothes who have reportedly put pressure on family members not to speak publicly about Ms. Chen's case.

On 11 June 2019, a police car was seen parked outside the house of Ms. Chen's parents.

On the same day, Ms. Chen's lawyer went to the Pudong Public Security Bureau in order to submit documents to formally act as a defense lawyer for Ms. Chen. The authorities reportedly refused to accept the credentials following a discussion with the National Security Department. The lawyer lodged a complaint with the petition office of the Pudong Public Security Bureau and applied to the Pudong New District Procuratorate to investigate the rejection of his credentials.

Prior to her detention Ms. Chen had signed an entrustment notice for the lawyer to represent her. However, during a meeting on 2 July 2019, authorities from the Pudong New District Procuratorate refused to recognise him as her legal counsel, arguing that said notice did not include a date and thus could not be considered "valid".

The authorities have acknowledged that Ms. Chen had been formally arrested on an unknown date in June 2019 on charges of "inciting subversion of state power" under Article 105(2) of China's Criminal Law. The charge stipulates a fixed-term imprisonment of no less than five years, "public surveillance or deprivation of political rights".

The authorities refused to disclose the place of Ms. Chen's detention and her whereabouts remain unknown to date.

We wish to express our serious concerns regarding the alleged arbitrary detention and enforced disappearance of Ms. Chen, which appear to be a direct result of her human rights activism, and her exercise of the right to freedom of expression. We also wish to express our concerns over the reported obstacles to her meeting with legal representation in order to mount her legal defence, and her preclusion from contact with her family. Ms. Chen's alleged enforced disappearance also raises serious concerns over her treatment, along with the conditions in which she is being kept.

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 Ms. Chen was arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her 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 as well as the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court (principle 9 and guideline 8).

We would also 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.

We would further like to refer your Excellency's Government to article 19 of the UDHR which provides for the right to freedom of opinion and expression. We also wish to refer to resolution 12/16 of the Human Rights Council, which calls on States to refrain from imposing restrictions on discussion of government policies and political debate and reporting on human rights.

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.

We further recall the United Nations Declaration on the Protection of All Persons from Enforced Disappearances and in particular article 10 which establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest as well as articles 7 and 12.

Furthermore, we would like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 on the fate and whereabouts of Ms. Chen, including the exact location of her current place of detention.
3. Please provide information concerning the factual and legal grounds for the detention of Ms. Chen. Please explain how this measure is compatible with international human rights norms and standards.
4. Please provide information as to why Ms. Chen has been prevented from engaging in contact with her legal representative and family, and explain how this is in line with international human rights standards, including the principle of due process and fair trial as enshrined in article 10 of the Universal Declaration of Human Rights.
5. Please indicate what measures have been taken to ensure that human rights defenders in China are able to carry out their peaceful and legitimate work

in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegation of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

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

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders