

Mandates of 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 rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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AL CHN 22/2019

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 34/5, 42/22, 36/6, 34/18, 41/12 and 42/16.

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, short-term enforced disappearance and charging of health rights defenders from the organisation Changsha Funeng, Messrs. Cheng Yuan, Liu Dazhi and Wu Gejianxiong, in connection with their advocacy for non-discrimination and the rights of disadvantaged groups, as well as the investigations opened against Mr. Cheng's wife and brother.

Changsha Funeng is an organisation founded in 2016 to defend the rights of disadvantaged groups in the realization of their right to health, including persons with disabilities, Hepatitis B and AIDS, through policy advocacy and legal empowerment.

Cheng Yuan is a human rights defender and co-founder of Changsha Funeng. He has extensive experience advocating for health rights and non-discrimination in China, including through impact litigation. Since 2013, Cheng Yuan has also campaigned against the "one child" family planning policy and for a reform of household registration laws.

Liu Dazhi is a human rights defender who joined Changsha Funeng in 2017. He has also campaigned for workers' rights and justice for victims of occupational diseases, and has sought State accountability for environmental health issues.

Wu Gejianxiong is a human rights defender who recently joined Changsha Funeng to support the work of lawyers involved in defending the rights of members of vulnerable groups.

Violations of the rights of human rights defenders advocating on issues related to HIV/AIDS were the subject of several communications sent by Special Procedures mandate holders, including the letters sent on 2 December 2016 (case no. CHN 13/2016) and 23 April 2019 (case no. CHN 6/2019). While we would like to thank your Excellency's Government for the responses dated 20 January 2017 and 6 May 2019, respectively, we remain concerned given the allegations below.

According to the information received:

In July 2019, Mr. Cheng received information that Changsha State Security Bureau intended to detain him if he returned to Changsha City.

On 22 July 2019, Changsha State Security Bureau agents detained Mr. Liu and Mr. Wu in Changsha City, without presenting them with an arrest warrant. They were taken to an unknown location and forcibly disappeared for five days.

On the same day, Changsha State Security Bureau agents forcibly entered Mr. Cheng's house in Shenzhen City and detained him as well. He was taken to an unknown location. The state security agents also blindfolded and handcuffed his wife, Ms. Shi Minglei, and took her for interrogation to Wanke No. 5 Building Residential Community Subdistrict Office. During the interrogation, Ms. Shi was asked exclusively about her husband's activities and was accused of providing financial resources to Mr. Cheng. She was threatened that if she did not provide sufficient information, her three-year-old daughter would be brought along for interrogation and two colleagues of her husband, one of them pregnant, would be detained. She was also required to write a letter stating that she would not share any information with the media. The state security agents seized her identity documents, bank cards, mobile phone and computer, which have not been returned to date. Her bank account was frozen. She was released the next day but was placed under residential surveillance at her house in Shenzhen City, on suspicion of "subversion of state power". According to the information received, no formal charges have been brought against her.

According to Chinese law, Ms. Shi may be held under residential surveillance for a maximum of six months. She has been granted approval to leave her house to take her daughter to school and go to work. She has been banned from leaving Shenzhen City. Police officers have occasionally threatened her with completely restricting her to her house. Her bank account remains frozen. Her online activities are closely monitored.

On 23 July 2019, Changsha State Security officers served the "residential surveillance" notice to Ms. Shi and instructed her not to share information on her situation with anyone.

On 24 July 2019, officers from the Wangcheng District Public Security Bureau in Changsha reportedly denied that they had ordered the detention of the three

human rights defenders but stated that the case involved “many departments”. On the next day, it was revealed that Mr. Liu had been detained on suspicion of “subversion of state power” and was being held at an unknown state security detention centre.

On 26 July 2019, an officer from Changsha State Security Bureau informed Mr. Cheng’s brother, Mr. Cheng Hao, that Mr. Cheng was being held at the Hunan Province National Security Detention Hall Detention Centre. His fate and whereabouts had been unknown since his detention on 22 July 2019.

On 27 July 2019, Mr. Wu’s family received a written criminal detention notice, which stated that he had been detained on suspicion of “subversion of state power” and was being held at Hunan Province National Security Detention Hall Detention Centre.

On the same day, Shenzhen State Security officers came to Ms. Shi’s house and questioned her about her posts on Twitter concerning the case of her husband. She was told that the social media posts constituted a violation of her “residential surveillance” terms, which means that she could be transferred to a detention centre.

On 3 August 2019, Ms. Shi filed a complaint with the Changsha Municipal Procuratorate, the Procuratorate of Hunan Province, and the Hunan Provincial Department of State Security, alleging that she had been subjected to an abuse of power by the Changsha State Security Bureau.

On 8 August 2019, Mr. Cheng Hao, was summoned to the Zhonghuamen police station in Nanjing where he was interrogated about his social media posts concerning his brother’s detention.

On 13 August 2019, Changsha State Security Bureau came to Ms. Shi’s house and showed her a video recorded inside the detention centre, in which Mr. Cheng appeared thin and lethargic. She was warned not to speak to anyone about the video.

On 26 August 2019, the lawyers of Messrs. Cheng, Liu and Wu were informed by the Changsha State Security Bureau that the three human rights defenders had been formally arrested on the charge of “subversion of state power” under Article 105(1) of China’s Criminal Law. The charge stipulates imprisonment of up to 3 years for participants, 3 to 10 years for active participants, and not less than 10 years or life imprisonment for those who organize, plot or carry out the scheme of subverting the state power or overthrowing the socialist system, and to ringleaders and others who commit major crimes.

On 27 August 2019, officers from the Zhonghuamen police station in Nanjing presented Mr. Cheng Hao with a written criminal summons for “picking quarrels

and provoking trouble” under Article 293 of China’s Criminal Law, which is a crime in the category of “disrupting public order”. He was interrogated for 22 hours and threatened with criminal detention for continuing to speak out in support of his brother.

On 31 August 2019, Ms. Shi received a written arrest notice, which stated that Mr. Cheng had been formally arrested on 26 August on charges of “subversion of state power” and was being held at Hunan Province National Security Detention Hall Detention Center. The families of Messrs. Liu and Wu have not received a written arrest notice.

Messrs. Cheng, Liu and Wu have been held in incommunicado detention since their arrest. According to the Chinese law, those charged with offences categorized as “endangering state security”, such as “subversion of state power”, can be held in prolonged incommunicado detention, without access to legal counsel. The requests for a visit made by the lawyers of Messrs. Cheng, Liu and Wu have been rejected. Officials from the Changsha National Security Bureau have also repeatedly refused to provide information on the criminal case against Messrs. Cheng, Liu and Wu to their lawyers.

On 28 September 2019, Shenzhen State Security officers came to Ms. Shi’s house to warn her not to give media interviews or publish information on social media during the “sensitive” period ahead of China’s National Day on 1 October.

On 24 October 2019, officials from the Changsha Municipal Procuratorate held a meeting with Ms. Shi at a café during which they warned her that she was violating the terms of residential surveillance.

We wish to express our serious concerns regarding the alleged arbitrary detention, short-term enforced disappearance and formal arrest of Messrs. Cheng, Liu and Wu, and the serious charges brought against them, which appear to be a direct result of their human rights activism, in particular their advocacy for non-discrimination and the rights of disadvantaged groups in the realization of their right to health. We are furthermore concerned that by preventing the human rights defenders from continuing their legitimate work, these acts seriously undermine their right to associate freely. We also wish to express our concerns over their preclusion from contact with their families and their legal representation in order to mount their legal defence. Their incommunicado detention also raises serious concerns over their treatment, along with the conditions in which they are being kept. We further express concerns about the placement of Mr. Cheng’s wife under residential surveillance and the investigation opened against her and Mr. Cheng’s brother, which appear to be a result of their peaceful exercise of the right to freedom of expression and their family ties with Mr. Cheng.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the legal and factual grounds for the detention of and charges brought against Messrs. Cheng, Liu and Wu and explain how these are compatible with international human rights norms and standards.
3. Please provide detailed information as to the physical and psychological integrity of Messrs. Cheng, Liu and Wu.
4. Please provide information as to the allegations that Messrs. Cheng, Liu and Wu have been prevented from engaging in contact with their legal representatives and families, and explain how this is in line with international human rights standards, including article 10 of the Universal Declaration of Human Rights.
5. Please provide information on the legal and factual basis for the placement of Mr. Cheng's wife under residential surveillance and the investigation opened against her and Mr. Cheng's brother, and how these are compatible with international human rights norms and standards.
6. Please provide information concerning any investigation which has been undertaken with regards to the complaint filed by Ms. Shi with the Changsha Municipal Procuratorate, the Procuratorate of Hunan Province, and the Hunan Provincial Department of State Security, concerning the abuse of power by the Changsha State Security Bureau, including the threats made against her during interrogations. If no investigation has been undertaken, please explain why.
7. 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.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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 having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

Luciano Hazan
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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex

Reference to international human rights law

While we do not wish to prejudge the information made available to us, the acts described above appear to contravene articles 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998, which provide for the rights to a fair trial, the right to freedom of opinion and expression and the right to freedom of peaceful association. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.

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 like to remind your Excellency's Government that the right to freedom of association obliges States to maintain an enabling environment as was stated by the Special Rapporteur on the rights to freedom of peaceful assembly and of association: "it is crucial that individuals exercising this right are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence, including summary or arbitrary executions, enforced or involuntary disappearances, arbitrary arrest or detention, torture or cruel, inhuman or degrading treatment or punishment, a media smear campaign, travel ban or arbitrary dismissal, notably for unionists (A/HRC/20/27).

We would like to draw the attention of your Excellency's Government to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]". We would also like to draw your attention to the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") and in particular Rule 58 that provides that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals by corresponding or by receiving visits.

We would also like to remind your Excellency's Government of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China on 5 March 2001, which enshrines the right to physical and mental health. The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (E/C.12/2000/4) has stressed that the right to health is an inclusive right extending not only to timely and appropriate health care but also to other important aspects: it is closely related and dependent upon the realization of other human rights, including

nondiscrimination, equality, and the freedoms of association, assembly and movement, which address integral components of the right to health (para 3). As part of their obligations under ICESCR article 12, States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting groups in vulnerable or marginalized situation in the realization of their right to health. (para 62). Violations of the right to health may arise from those State actions, policies or laws that contravene the standards set out in ICESCR article 12 including the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health (para 50), the promotion of health related work and campaigns with respect to HIV/AIDS, sexual and reproductive health rights, domestic violence, and the abuse of drugs and other harmful substances (para 36).

The Human Rights Council resolution 31/32, in its paragraph 2, calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards the realisation of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

We further 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. Paragraph 5 (k) of the same resolution, calls upon states to “[t]o adopt and implement policies and programmes that aim to effectively raise awareness of, and disseminate information and education on, prevention and treatment of HIV/AIDS and other diseases through effective and equal access to information and all appropriate means, including through the media and availability of information and communication technologies, and targeted at specific vulnerable groups.

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- Article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely 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 to draw public attention to those matters;
- Article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

We would also like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which sets out the necessary protections with respect to the responsibility of the State; in particular that no State shall practice, permit or tolerate enforced disappearances (Article 2), that any person deprived of liberty shall be held in an officially recognized place of detention (Article 10.1) and that an official up-to date register of all persons deprived of their liberty shall be maintained in every place of detention (Article 10.3). We would also like to highlight that there is no time limit, no matter how short, for an enforced disappearance to occur.