

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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL CHN 8/2020

7 May 2020

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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/5, 42/22, 36/6, 34/18, 41/12, 42/16, 40/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the penalties faced by individuals during the COVID-19 outbreak, in particular the arbitrary detention of Mr. Guo Quan and the enforced disappearance Mr. Xu Zhiyong, as a result of the legitimate exercise of their right to freedom of expression.**

Mr. **Guo Quan** used to be an associate professor at Nanjing Normal University before he lost his job as a result of his human rights activism. He established the China Xinmin Party (New People's Party) in 2007, which allegedly has around ten million members. China Xinmin Party pledges to represent those who have been victims of forced evictions from their homes or other threats from the authorities. Mr. Guo Quan was previously detained in 2008 on the charge of "subversion of state power" and released in 2018. The sentence was allegedly related to his work at China Xinmin Party and writings that were critical of the Governmental system. Mr. Guo was the subject of a previous communication addressed to your Excellency's Government on 19 October 2009 (UA CHN 30/2009). We thank your Excellency's Government for the reply received on 18 January 2010.

Mr. **Xu Zhiyong** is a human rights defender and legal activist that has worked since 2003 to promote non-violence, respect for the rights of individuals facing the death penalty, provide legal assistance to the homeless and advocate for legal reform in China. He founded the "Open Constitution Initiative", which later gave rise to the "New

Citizen's Movement", a loose network of human rights defenders, academics, lawyers and other activists who meet to discuss human rights, political reform, social justice and democracy. Mr. Xu was previously detained in 2013, along with other members of the New Citizen's Movement, and released in July 2017. Mr. Xu has been the subject of five communications sent to your Excellency's Government (UA CHN 12/2013, UA CHN 8/2013, UA CHN 29/2010, UA CHN 21/2009 and UA CHN 10/2006). We thank your Excellency's Government for the replies received to some of these communications. We regret not having received a response to UA CHN 29/2010. Mr. Xu's case is also related to the arrest of a number of human rights defenders in December 2019, communicated in UA CHN 6/2020. We thank your Excellency's Government for the reply received on 2 April 2020 and look forward to receiving the translation.

According to the information received:

Many of those exercising their right to free speech online in relation to the COVID-19 outbreak and pandemic have allegedly faced retaliation from the authorities. On 21 February 2020, the Chinese Government announced that the police had intervened in 5,111 undisclosed cases of alleged "fabricated and deliberately disseminated false and harmful information". We have received information concerning 897 individuals facing retaliation for publishing information online about the COVID-19 virus. As of 26 March 2020, there were 116 individuals who had been arbitrarily detained, nine in criminal detention and five who had been forcibly disappeared. The remaining individuals had been fined, threatened, subject to interrogations, required to give forced confessions, given educational reprimand or placed in administrative detention. Educational reprimand and administrative detention were the most frequent punishments for individuals charged with "spreading misinformation" or "disrupting public order".

The Chinese social media platform WeChat was the medium most cited by the authorities when penalising those for speaking online about the COVID-19 outbreak. Some users had their accounts deleted as a result of the opinions expressed online. The deletion of WeChat accounts allegedly caused severe personal, professional and social risk, as the platform is the principal, and sometimes the only, method of payment for food delivery and travel in areas subject to heavy social distancing measures.

Background

In December 2019, COVID-19 was first identified by Chinese doctors as "pneumonia of unknown cause". On 30 December 2019, the Wuhan Health Commission alerted the public to the outbreak of this pneumonia of unknown cause, but also allegedly sent a directive to medical workers, which prohibited them from spreading any additional information about the virus.

On 1 January 2020, a day after the authorities informed the World Health Organisation of the unknown virus, the Wuhan Public Security Bureau announced that it had punished eight individuals for "spreading false information" online

about the outbreak. On that same day, WeChat allegedly began to censor keywords related to the virus, following another Chinese social media application called “YY”, which began to censor such content the day before.

On 3 January 2020, a group of medical professionals was allegedly arrested for alerting the media about the virus during the previous four days.

According to the information received, medical staff started to become infected with the virus as of 5 January 2020. On 9 January 2020, State-controlled media allegedly continued to claim that there was no evidence of human-to-human transmission of the virus, which by that time had been successfully identified as a novel strain of the coronavirus by an expert evaluation team of the Chinese National Health Commission. By mid-January, 500 medical staff had been infected. However, the Wuhan Health Commission informed the Central Government that there had been no new coronavirus cases between 3 and 16 January 2020. The authorities would claim later that this was not an accurate statement. A number of health professionals, including one from the group of medical professionals that had been arrested on 3 January 2020, subsequently lost their lives as a result of the COVID-19 infection.

On 20 January 2020, the authorities publicly acknowledged for the first time that the so-called novel coronavirus could be transmitted from human to human. Up to 20 January 2020, ten individuals had been punished for their online expressions about the viral outbreak. However, between 21 and 31 January 2020, allegedly 396 individuals were reportedly penalised.

On 28 January 2020, an article from a judge published on the social media account of the Supreme People’s Court of China noted that if law enforcement had not so promptly quelled pertinent health information, China might be in a better position to fight the virus.

On 5 February 2020, the Cyberspace Administration of China issued a statement to request local cyberspace administrative offices to tackle “harmful content”, including videos of the COVID-19 epidemic that contributed to “spread[ing] panic”.

On 1 March 2020, the “Provisions on the Governance of the Online Information Content Ecosystem” came into effect. In addition to reaffirming the criminal law provisions in limiting freedom of expression, the new regulations, issued by the Cyberspace Administration of China, instructed content producers to not publish information with “exaggerated titles” or “sensationalising gossip”. Those considered in breach of the new regulations can have their social media accounts shut down or criminal charges brought against them.

According to the information received, foreign journalists have been facing increased surveillance, personal harassment and harassment of sources since the outbreak of the virus.

A number of media reporting on the crisis, including interviews with medical doctors or health department directors, have reportedly been censored. On 27 March 2020, 13 foreign journalists were ordered to leave China.

In several countries abroad, Chinese embassies reportedly issued statements denouncing “irresponsible” reporting from journalists and alleged attempts to “politicise” the epidemic and spread “lies” about China’s handling of the COVID-19 outbreak.

On 17 April 2020, Chinese authorities revised the official death toll in the city of Wuhan, Hubei Province, adding roughly 50% more cases than reported previously. The adjustments were reportedly due to updated reporting methods of deaths that occurred outside of hospitals.

Mr. Guo Quan

In the month of January 2020, Mr. Guo Quan allegedly criticised the Government’s response to the COVID-19 outbreak on WeChat. On 31 January 2020, Mr. Guo Quan was taken by members of the Nanjing police to Nanjing No. 2 Detention Centre on undisclosed charges. On 26 February 2020, a relative of Mr. Guo alleged that his detention was based on the charge of “inciting subversion of State power”, which according to article 105 (2) of China’s Criminal Code is punishable with a minimum of five years in prison.

Mr. Guo’s lawyers and family have not been able to meet with him due to restrictions in place as a result of the COVID-19 pandemic. However, individuals charged with “inciting subversion of state power” are frequently denied visits from their family or lawyers on the grounds that it would “endanger State security”. The lawyers have not yet filed a complaint to the authorities for not facilitating a meeting.

Mr. Xu Zhiyong

On 26 December 2019, Mr. Xu Zhiyong reportedly went into hiding following the 2019 end-of-year crackdown on human rights defenders in the city of Xiamen. During the weekend of 7 and 8 December 2019, Mr. Xu allegedly attended an informal weekend gathering in Xiamen which was attended by various human rights defenders and academics. The aim of the gathering was to discuss civil society and politics in China. After the gathering, a number of human rights defenders were arrested, and four of them were forcibly disappeared.

On 31 December 2019, Mr. Xu’s home was searched by officers in plainclothes while he was not present. No warrant was presented to the person who was in the house at the time of the raid. The police officers allegedly seized a safe which contained his deeds to the house, money and other items. A number of other personal items, books and letters were also confiscated.

On 4 February 2020, while in hiding, Mr. Xu released an article called “Dear Chairman Xi; it’s Time for You to Go”. In the article, Mr. Xu was critical of the Government’s handling of the COVID-19 outbreak, arguing that President Xi Jinping should resign.

On 15 February 2020, Mr. Xu was located at the home of an acquaintance in the city of Guangzhou and taken by the police to an undisclosed location. He was placed under Residential Surveillance in a Designated Location (RSDL), which is regarded by human rights mechanisms as a form of enforced disappearance. Mr. Xu has not yet been formally arrested, but is allegedly accused of “inciting subversion of State power”.

Mr. Xu’s family, who were under surveillance in their home in Kaifeng City, Henan Province, since he had gone into hiding, were informed by police on 16 February 2020 that they would no longer be monitored as Mr. Xu had been found. No information about the status of his arrest, the crimes he was accused of committing or his place of detention was communicated to his family.

On 24 February 2020 Mr. Xu’s family called Dongxiaokou Police Station in the Changping District, close to Mr. Xu’s residence in Beijing (approximately 650 km from his family home). They were informed that they could not be provided with any information on the case unless they presented themselves the following day with Mr. Xu’s ID card. On 25 February 2020, Kaifeng national security officers allegedly presented themselves at the family’s home and informed them that Mr. Xu had been placed under RSDL. They were not informed on the crimes he had allegedly committed, and were told not to hire a lawyer, since the State would assign a State counsel to him.

On 5 March 2020, a relative of Mr. Xu travelled to the Dongxiaokou Police Station in Beijing. She was informed by police officers on duty that a notice had already been mailed to the family, although the family had not yet received it. Over the following days she made an unsuccessful inquiry at the Beijing Public Security Bureau Changping District Sub-Bureau and paid two more visits to the police station. On 7 March 2020 she was permitted to meet with the Director of Dongxiaokou Police Station. He informed her that Mr. Xu was being held on suspicion of “inciting subversion of state power” and that it would be unlikely that he would have access to his lawyer due to the severity of the case.

While we do not wish to prejudge the accuracy of the information received, we are deeply concerned by allegations that human rights defenders have been punished and restrictions have been placed on their freedom of expression online in light of the COVID-19 outbreak. We are further concerned that the aforementioned individuals have been charged with “inciting subversion of the State power” in this context. We are concerned that the Chinese authorities punished individuals, including medical professionals, who attempted to inform the public on the spread of the virus where there may not have been widely available State figures. We raise our serious concerns that some steps taken by China to tackle the pandemic may be regarded as a clampdown on

freedom of expression inconsistent with international human rights law, including with regard to the right of access to information. It is deeply concerning that a large number of medical professionals, civil society actors and human rights defenders allegedly face fines, arrests and enforced disappearance for disseminating information online about the virus and the Government's response, facilitating public debate on the pandemic or expressing dissenting views.

We are furthermore concerned about recent actions reportedly taken by the Government of China, which appear to restrict freedom of expression online. The statement made by the Cyberspace Administration of China on 5 February 2020 and the new regulations issued by that same authority which came into effect on 15 March 2020, appear to broaden the scope for which freedom of expression online can be considered illegal. We are concerned that the law may further identify speech which could be considered illegal, and human rights defenders, journalists and other individuals may be criminalised, or have their professional and personal activities hindered, as a result.

We again reiterate our alarm at the continued use of Residential Surveillance in a Designated Location. We have raised serious concerns over its use on no fewer than eight occasions in just over three years, most recently with regard to four human rights defenders held under RSDL for participating in the December gathering which Mr. Xu also attended (UA CHN 6/2020). RSDL, as a form of enforced disappearance, without judicial oversight, without formal charges in conditions amounting to incommunicado detention or solitary confinement, contravenes the right of every person not to be arbitrarily deprived of his or her liberty and to challenge the lawfulness of detention before a court without delay. Without access to legal counsel or their families, those placed under RSDL are at risk of cruel, inhuman or degrading treatment or punishment, including torture. We express our deep concern that RSDL is used to silence dissent and prevent human rights defenders from carrying out their legitimate activities.

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 on the measures taken to ensure that medical professionals, human rights defenders and journalists can exercise their right to freedom of expression without restriction and without retaliation, threats or intimidation of any kind, including in relation to the COVID-19 outbreak.

3. Please provide information on how recent actions taken by the Cyberspace Administration of China, including the new Provisions on the Governance of the Online Information Content Ecosystem, are consistent with China's obligations under international human rights law.
4. Please provide information on the legal grounds for the arrest and detention of Mr. Guo and Mr. Xu, and explain how these measures are compatible with international standards related to the right to liberty and security of the person as enshrined in article 9 of the Universal Declaration of Human Rights. Please also provide information on Mr. Xu Zhiyong's place of detention.
5. Please indicate what measures have been taken to ensure the physical and psychological integrity of Mr. Guo and Mr. Xu, particularly on the measures taken to ensure that there is sufficient social distancing in their place of detention.
6. Please indicate whether Mr. Xu had had access to a lawyer of his choice, and if not, please explain why.

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.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that having transmitted an allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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punishment

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998.

In particular, without expressing at this stage any opinion on the facts of the case and on whether the reported detentions were arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of the abovementioned individuals not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the UDHR.

We would like to refer to article 19 of the UDHR, which guarantees the right to freedom of expression. While certain restrictions may be placed on freedom of expression, for the protection of national security or of public order (*ordre public*), or of public health or morals, they may not be arbitrarily imposed on those sharing legitimate concerns, observations or opinions on health or Government policy. While China is yet to ratify the ICCPR, As a signatory to the ICCPR, China has an obligation to refrain from any acts which would defeat the object and purpose of the Covenant prior to its entry into force (article 18 of the 1969 Vienna Convention on the Law of Treaties).

With respect to the charges on "inciting subversion of State power" to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a Government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not applied to individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under the UDHR, and their non-violent exercise cannot be regarded as constituting a criminal offence. We would like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10). We would also like to remind your Excellency's Government that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

We would also like to refer to China's obligations under article 12 (right to health) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which it ratified on 27 March 2001. The right to health is an inclusive right (General Comment

No. 14 of the Committee on Economic, Social and Cultural Rights, E/C.12/2000/4, para 11) closely linked, and dependent on, other rights, including the right of access to information (para 3). The right to health encompasses the right to request, receive and disseminate information and ideas about health-related issues (para 12.b.iv); violations of the right to health result from, inter alia, the deliberate withholding or misrepresentation of information vital to health protection or treatment (para. 50). In addition, under the right to health, States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting in the realisation of this right (para. 62).

Furthermore, we would like to refer to Human Rights Council resolution 24/5, which “[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including [...] persons espousing minority or dissenting views or beliefs [and] 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.” Digital technology is integral to the exercise of the rights of peaceful assembly and association. Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised. Indeed, such technologies are important tools for organizers who seek to mobilize a large group of people in a prompt and effective manner, and at little cost, and also serve as online spaces for groups of people that are marginalized by society and are confronted with restrictions when operating in physical spaces (A/HRC/41/41, para. 11).

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 article 6, which guarantees the right to seek, obtain, receive and hold information about all human rights and fundamental freedoms as well as freely publish, impart or disseminate views, information and knowledge and observance of human rights and fundamental freedoms.

With regard to the enforced disappearance of Mr. Xu Zhiyong, the United Nations Declaration on the Protection of All Persons from Enforced Disappearances recognises the right to be held in an officially recognised place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention. The same Declaration establishes the obligation of the detaining authorities to promptly 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 (article 10). The Declaration also establishes the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 10(3)) and provides that 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 7).

China has expressed on several occasions its support for the international community's efforts to eliminate and prevent enforced disappearances, including at the Human Rights Council. The Working Group on Enforced or Involuntary Disappearances observes that RSDL, where it consists of placing individuals under incommunicado detention for investigation for prolonged periods without disclosing their whereabouts amount to secret detention and is a form of enforced disappearance (A/HRC/36/39, para. 71 and A/HRC/19/58/rev.1 pages 36-37).

We would like to remind your Excellency's Government that the Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its Concluding Observations on the Fifth Periodic Report of China (CAT/C/CHN/CO/5) particularly para. 13 (d) recommended that China "repeal the provisions in the Criminal Procedure Law that allow restrictions to the right to counsel and to notifying relatives in cases of "endangering State security", "terrorism", serious "bribery" or cases involving "State secrets"". Para. 15 also recommended that the State party repeal, as a matter of urgency, the provisions of the Criminal Procedure Law that allow suspects to be held de facto incommunicado, at a designated location, while under residential surveillance. Pending the repeal of that provision, the Committee recommended to the State party that it ensures that Procuratorate promptly review all the decisions on residential surveillance taken by public security officers and ensure that detainees who are designated for potential prosecution are charged and tried as soon as possible and those who are not to be charged or tried are immediately released. If detention is justified, detainees should be formally accounted for and held in officially recognised places of detention. Officials responsible for abuses of detainees should be held criminally accountable. These recommendations do not seem to have been taken into account by China and we are hereby reiterating them.

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 revised Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 17 December 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.