

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 independence of judges and lawyers; 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 16/2020

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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 independence of judges and lawyers; 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, 35/11, 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 trial and sentencing, behind closed doors, of Mr. Yu Wensheng.

Mr. **Yu Wensheng** is a human rights lawyer. He has notably represented prominent human rights defenders and lawyers in national security cases before the Chinese courts, some of which have been the subject of previous Special Procedures communications listed below. He was among a group of lawyers who sued the Government over excessive air pollution in 2016 and has vocally expressed his views on social and political matters in China.

Mr. Yu was the subject of one previous communication, referenced CHN 5/2018 sent by Special Procedures to your Excellency's Government on 6 March 2018, in which we raised concerns that on 19 January 2018, one day after he published an open letter recommending amendments to the Chinese constitution, Mr. Yu was picked up by police and placed under Residential Surveillance in a Designated Location (RSDL) on suspicion of "inciting subversion of state power" and "obstructing public service". We thank your Excellency's Government for the reply dated 15 March 2018.

Mr. Yu Wensheng arrest and detention were deemed arbitrary in Opinion No. 15/2019 adopted by the Working Group on Arbitrary Detention during its 84th session.

Special Procedures mandate holders have previously communicated concerns regarding the persecution of human rights lawyers working in China, some of whom

Mr. Yu defended in court. We raised concerns namely about their arrest, detention, enforced disappearance and long-term imprisonment; on 15 July 2015 (CHN 6/2015), 14 September 2016 (CHN 7/2016), 26 October 2016 (CHN 9/2016), 2 December 2016 (CHN 13/2016), 22 March 2017 (CHN 3/2017), 24 January 2018 (CHN 2/2018), 6 March 2018 (CHN 5/2018) and 6 April 2018 (CHN 7/2018), 9 March 2020 (CHN 6/2020), 12 March 2020 (CHN 5/2020). We thank your Excellency's Government for the responses received to a number of these communications.

According to the information received:

On 18 April 2018, Mr. Yu Wensheng's family lawyers travelled to the Tongdhan District Public Security Bureau in Xuzhou to request permission to visit Mr. Yu in his place of detention, which had still not been disclosed. They were handed a statement, allegedly written and signed by Mr. Yu, which dismissed the lawyers from acting as his legal counsel and requested that his family do not appoint another. Having previously witnessed other persecuted lawyers inexplicably dismiss their lawyers, prior to his arrest, Mr. Yu had recorded a video testimony in which he stated that, if he were ever to be detained, he would not voluntarily renounce his legal counsel.

On 19 April 2018, two months after he was picked up by police outside his home in Beijing, Mr. Yu Wensheng was formally arrested. This marked the end of his two months under Residential Surveillance in a Designated Location. The authorities revealed that he was detained in Xuzhou City Detention Centre. That day, he was permitted to speak with his family via video link. Mr. Yu has not been allowed to make contact of any kind with his family since then.

On 19 November 2018, Mr. Yu's case was sent back to the Xuzhou City Municipal Public Security Bureau for further police investigation, prolonging his pre-trial detention.

In February 2019, prosecutors indicted Mr. Yu of the charge "inciting subversion of State power" but dropped his other charge of "obstructing public service".

On 9 May 2019, Mr. Yu's trial took place behind closed doors at the Xuzhou Municipal Intermediary Court. There was no public notification of the trial before it took place and his family were not notified in advance of the hearing. His family and their lawyers contacted the People's Procuratorate of Xuzhou City in December 2019 and May 2020 to determine the outcome of the trial. They were informed on both occasions that no verdict had been reached.

Over 13 months later, on 17 June 2020, the Xuzhou City Intermediate People's Court announced the verdict of Mr. Yu's case. He was sentenced to four years in prison for "inciting subversion of state power". His family were allegedly informed by phone call after the verdict was handed down, which included a

three-year suspension of his political rights. Mr. Yu will reportedly appeal the verdict.

Without prejudging the accuracy of the allegations, we would like to express our concern regarding the sentencing of Mr. Yu Wensheng. We are particularly concerned that his trial took place behind closed doors and he was not permitted to select the lawyer of his choosing. In this regard, we are deeply concerned that Mr. Yu may have been deprived of his right to a fair trial. This concern is compounded by his sentencing for “inciting subversion of State power”, which falls under China’s national security legislation. We remind your Excellency’s Government that the exercise of the right to freedom of opinion and expression includes the right to a critical or dissenting opinion of Government activities and policy. If the above allegations are confirmed, the misuse of national security legislation with penal sanctions against an individual peacefully exercising his right to freedom of expression would be contrary to China’s obligations under international human rights law. We are also concerned that this is indicative of a broader pattern of growing restrictions on the space for discussion and debate in China, where those who defend and exercise this right find themselves increasingly at risk of medium to long-term incarceration, often under the framework of national security or counter-terrorism legislation.

We would also like to reiterate our concern that the practice of imposing Residential Surveillance in a Designated Location without judicial oversight, without formal charges, and without informing the individual’s families of their place of detention in conditions amounting to an enforced disappearance which increases the risk of being subjected to torture and other cruel, inhuman or degrading treatment or punishment. In addition, the use of RSDL in practice 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 and without delay.

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 factual basis for Mr. Yu’s conviction and how it is consistent with your obligations under international law. In particular, please elaborate on how Mr. Yu “incited subversion of State power” and the exact laws and provisions under which he was charged.

3. Please provide information on the reasons why Mr. Yu's trial took place behind closed doors without prior notification.
4. Please provide details regarding the reasons why a verdict was not reached for over 13 months from the date of his trial.
5. Please provide details on why Mr. Yu dismissed the lawyers of his choosing, after previously stating that he would never do so.
6. Please explain why Mr. Yu has not been able to make contact with his family.
7. Please provide detailed information on the measures taken by the authorities to ensure that the independence of lawyers, in particular those who take up or are involved in cases related to human rights or other sensitive issues, is guaranteed and that they can fulfil their professional functions in a safe and enabling environment.

We would appreciate receiving a response within 60 days. Passed this delay, 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 after 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.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan
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Diego García-Sayán
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Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
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. 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).

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.

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 (article 10). The same article of the Declaration 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 (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 12) 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 UN Human Rights Council¹. The Working Group 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 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

¹ Statement made at the 36th session of the Human Rights Council, September 2017

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.

We would also like to remind that in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access shall be provided without delay. The denial of access to lawyers of one choosing violates the right to legal assistance guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights, principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 61 (1) of the Nelson Mandela Rules.

In this regard, we would like to remind your Excellency’s Government of the Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Concluding Observations of its Fifth Periodic Report of China (CAT/C/CHN/CO/5) particularly para. 13 (d) which 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. 14 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.

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 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.