

Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to education; 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 minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on discrimination against women and girls

REFERENCE:
AL CHN 21/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences; Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right to education; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/17, 42/22, 37/12, 44/3, 42/16, 43/8, 40/10, 40/16, 43/20 and 41/6.

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 ill-treatment, including gender-based violence against Ms. Gulbakhar Jalilova, a Kazakh national and businesswoman and member of the Uyghur minority, as well as the lack of gender-specific measures that meet the needs of women detainees at Detention Centres No. 2 and No. 3 in Urumqi, capital of the Xinjiang Uyghur Autonomous Region (XUAR).**

The letter follows the joint communication of 1 November 2019¹, concerning the application of the Counter-Terrorism Law of the People's Republic of China (Counter Terrorism Law) promulgated on 27 December 2015 effective as of 1 January 2016 and its Regional Implementing Measures, the 2016 Xinjiang Uyghur Autonomous Region Implementing Measures of the Counter-Terrorism Law of the People's Republic of China. Concerns related to law and policy that criminalize fundamental rights in various regions of China have been raised in several communications sent by a number of Special Procedures mandate holders, including communications sent on 12 January 2018 (ref. no CHN 1/2018); on 16 February 2018 (ref. no CHN 4/2018); 6 March 2018 (ref. no CHN 5/2018); 6 April 2018 (ref. no CHN 7/2018); 14 June 2018 (ref. no CHN 12/2018); 11 July 2018 (ref. no CHN 13/2018); 6 August 2018 (ref. no CHN 14/2018); 22 August 2018 (ref. no CHN 15/2018); 28 August 2018 (ref. no CHN 17/2018); 12 November 2018 (ref. no OL CHN 21/2018); and 2 October 2019 (ref. no CHN 21/2019).

¹ OL CHN 18/2019

While we would like to thank your Excellency's Government for its response to the most recent communication (ref. no. OL CHN 18/2019) dated 16 December 2019, we remain concerned, given the allegations below, at the continued application of laws and policies that limit the exercise of fundamental rights in Xinjiang.

According to the information received:

On 22 May 2017, at approximately 8 a.m., Ms. Jalilova was apprehended by three police officers at the Xiyu Hotel in Urumqi, the capital of the Xinjiang Uyghur Autonomous Region. The police officers reportedly only presented their identification documents in Mandarin, which Ms. Jalilova does not read or understand. She was not presented with an arrest warrant, nor was she provided with any reason for her arrest. Ms. Jalilova had been trading clothing and other miscellaneous items in and out of the region on a monthly basis for twenty years.

Following her arrest Ms. Jalilova was escorted to a State Security branch of the Urumqi Public Security Bureau in the centre of the city where she was held without access to water or food until 2 p.m. while her phone was reportedly being 'verified'. She was then taken to an interrogation room where she was subjected to questioning and subsequently requested to sign an official document in Mandarin. Ms. Jalilova refused to sign the document on the basis that her request for legal assistance or access to a translator was denied. Ms. Jalilova's Kazakh national passport was confiscated and replaced with a Chinese passport, thus denying her access to consular assistance. During the interrogation Ms. Jalilova was reportedly seated in a 'tiger chair' regularly used by police to immobilize suspects for hours in painful positions during questioning.

At approximately 11 p.m. that evening Ms. Jalilova was taken to Urumqi's Detention Center No. 3 by State Security officers, where she spent three months. On 27 August 2017, Ms. Jalilova was transferred to Urumqi's Detention Center No. 2 where she was reportedly moved between 21 different rooms during her three-month detention at the centre. In November 2017, she was transferred back to Urumqi's Detention Center No.3, and on 12 December, she was taken to a hospital where she remained for ten days due to high blood pressure. She was hospitalised on three different occasions, each for a period of 10 days during her detention. Ms. Jalilova was not informed of the reason for her detention, nor were any charges brought against her.

It is reported that conditions in Detention Centres No. 2 and No.3 in Urumqi are dire, with inmates held in small rooms seven by three metres wide with no windows. Approximately 40 women, belonging to the Uyghur and other Muslim minorities and aged between 14 and 80 years old were held in each room. The detention centres are also reportedly mixed. Access to adequate water for basic hygiene was limited, as was the provision of soap, toilet paper, tooth-paste, sanitary towels or other basic items. Women were also not provided with shampoo to wash their hair and as a result many women developed head lice infections, and would then have their heads shaved.

Inmates did not have beds or mattresses to sleep on, and given the cramped conditions in each room, they had to take turns sleeping for two hours at a

time. They were also handcuffed while sleeping and eating. An extreme lack of privacy existed through the use of security cameras covering every angle of every room, including the shared toilet. The food provided was inadequate in quantity and quality.

It is reported that medical facilities were extremely limited, with inmates only having their blood pressure taken on a weekly basis by placing their arm through a gap in the door. In addition, reports suggest that women were forcibly administered two tablets per day, along with a shot in the arm every ten days, without being informed of what they were being given. Some time after taking the medication reports suggest that women suffered from loss of appetite, ‘brain fog’, and cessation of menstrual cycles.

Every day, the inmates were required to sing national songs in the morning and before every meal (otherwise food would not be provided), and in the afternoon they were required to learn Mandarin and were trained in camp regulations, including hygiene, obedience, and maintaining order in the camps. They were forced to watch political speeches on TV about China’s domestic development, social and ethnic harmony, and the importance of learning the Chinese language. In addition, they were forced to express regret for their non-Han identity and would undergo punishment for displaying any aspect of their cultural identity, including their language and religious beliefs. Techniques used to exert control over detainees in this respect were very intrusive, including using cameras to ensure they would not pray while using the toilets.

Every ten days, a number of armed female guards would enter the rooms and ask four women to undress completely in order to inspect them. Three male guards would remain in front of the cell door to prevent any inmate from escaping. The inspections took place in full view of the male guards. Any signs of tears or disobedience would be met with an electroshock.

Throughout her time in detention, Ms. Jalilova was subjected to regular interrogation during which she was repeatedly asked to sign a paper and questioned about the conversations and actions of other inmates. During questioning a bag was placed over her head and she was chained to a ‘tiger chair’ and sometimes physical force was used if she did not cooperate.

Based on the formal notice communicated to the Kazakh authorities on 25 May 2017, Ms. Jalilova was detained by the Urumqi City Public Security on suspicion of ‘helping terrorist activities’. The document was reportedly sent to her children in Kazakhstan within 24 hours of her detention. Ms. Jalilova only learned about the formal charges brought against her upon her release and return to Kazakhstan.

On 29 May 2017, one week after her arrest, the Head of the Representative Office of Kazakhstan’s Ministry of Foreign Affairs reportedly inquired about Ms. Jalilova’s status. The Ministry was informed by the Chinese authorities that they were not holding the person the Kazakh authorities were looking for. Ms. Jalilova had been given a Chinese passport shortly after her arrest thus denying her legal identity and any form of consular assistance.

On 3 September 2018, Ms. Jalilova was released, and was informed that she had committed no crime. As a Kazakh national Ms. Jalilova was given a visa to continue conducting business in China, however after returning to Kazakhstan for twenty days, she travelled abroad and is currently seeking asylum.

It is alleged that the detention centers where Ms. Jalilova was held are also used to complement re-education camps when they reach full capacity, camps were allegedly a large number of ethnic Uyghurs and other minorities in Xinjiang have been held.

While we do not wish to prejudge the accuracy of the information received, we would like to express our grave concern over the reported arbitrary detention of, as well as ill-treatment, including gender-based violence against Ms. Jalilova, and the poor conditions in which she was detained without access to consular or legal advice. The application of coercive medical treatment, denial of adequate health care, in violation of her right to health and her sexual and reproductive rights, the use of healthcare treatment as punitive measure, and the lack of basic services, inadequate quantity of food and clean water and the allegations of torture and other, cruel, inhuman or degrading treatment or punishments are of deep concern.

We are further concerned that such violence, combined with strategies to prevent inmates from cherishing and expressing their cultural identity, including their language and religious beliefs or practices, lead to indoctrination and forced assimilation of people, in contradiction with the right to freedom of opinion and expression, freedom of religion and belief, the right to education and cultural rights, including the right to choose and express one's own identity. We express our serious concerns about the lack of gender-specific measures that meet the needs of women detainees, including Ms. Jalilova, and the denial of access to facilities and goods required to meet women's personal hygiene needs, including sanitary pads, and the failure to meet basic standards in terms of food and accommodation, as outlined by the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The failure to develop and implement such policies may amount to discrimination and violence against women, and thus fall within the scope of the Convention on the Elimination of All Forms of Discrimination against Women.

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 an explanation as to legal and factual basis for the arrest without a warrant of Ms. Jalilova followed by 15 months of detention

between 2017 and 2018 without charge or reasons for detention explained.

3. Please provide factual information as to why Ms. Jilalova was suspected of helping terrorist activities; how this led to her detention and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).
4. Please indicate why Ms. Jalilova was denied access to a translator and to consular or legal services.
5. Please provide details regarding efforts to address allegations of inhuman or degrading treatment against Ms. Jalilova, along with reports of inadequate healthcare, including reproductive health services and information, and accounts of similar mistreatment against other inmates in the Urumqi's Detention Center's No. 2 and No. 3.
6. Please explain any measures taken to address allegations of the coercive use of medical treatment in the form of pills and injections administered without women's consent and the use of health related measures as a punishment.
7. Please provide information on the content of programmes or classes conducted in Detention Centres No. 2 and No.3 in Urumqi, and their compliance with the right to freedom of opinion and expression, freedom of religion and belief, the right to education and cultural rights, including the right to choose and express one's own identity. While thanking you for your response to OL 18.2019 regarding "vocational skills education and training centres" to "defend against the infiltration of extremist ideas", we would appreciate receiving more detailed information on the actual programmes and techniques envisaged and used, and their compatibility with international standards.
8. Please provide details about the measures taken to ensure that women detained in Urumqi's Detention Center have adequate access to health care, including to reproductive health services, goods and information.
9. Please indicate any measures that are being taken to address sexual harassment and gender-based violence in the afore-mentioned detention centres and what accountability mechanisms are available for detainees who want to file a complaint and obtain redress.
10. Please provide details about any measures taken in relation to the protection of minorities such as the Uyghur community and other Muslim minorities to protect them from the re-occurrence of the above cited allegations.

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 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 communications in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

A copy of this communication has been sent to the Government of the Republic of Kazakhstan.

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.

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

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to bring to your Excellency's attention articles 9 and 10 of the Universal Declaration on Human Rights which prohibits arbitrary arrest and guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them. In this context, we would also like refer to relevant provisions 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. More specifically, Principles 7 and 10 refer to the right to be informed of the reasons justifying the deprivation of liberty as well as the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of the deprivation of liberty.

We would also like to bring to your attention articles 18 and 19 of the Universal Declaration of Human Rights, relating to the rights to freedom of religion and belief and freedom of opinion and expression, as well as articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights relating to the right to education and the right to take part in cultural life. As underlined by the Special Rapporteur on the right to education, education must always be free of propaganda and imply access to information and a focus on the free development and exercise of critical thinking (A/74/243, paras. 35-36.).

Furthermore, we would like to bring to the attention of your Excellency' Government article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Similarly, article 2 provides that violence against women shall include: (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution and (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government in 1980), whether perpetrated by a State official or a private citizen, in public or private life.

We further recall article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

We would like to underline that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (hereinafter the Bangkok Rules) adopted by the General Assembly in resolution 65/229, which complement the UN Standards Minimum Rules for the Treatment of Prisoners, provides guidance for protecting the right of women in prison. The Bangkok Rules stress that the principle of non-discrimination requires States to address the unique challenges that women prisoners face. It further takes into account their gender-specific needs and provides comprehensive standards for the treatment of women prisoners and offenders. Rule 5 of the Bangkok Rules states that “(t)he accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water...”.

In terms of the specific challenges that women offenders face, the Bangkok Rules affirm that “violence against women has specific implications for women’s contact with the criminal justice system”. In addition, States have an obligation under international human rights law to act with due diligence to prevent, respond to, protect against, and provide redress for all forms of gender-based violence” (A/68/340).

Furthermore, the Working Group on Discrimination against Women and Girls emphasized in its report on women deprived of liberty (A/HRC/41/33) that not only the causes but also the consequences of deprivation of liberty for women are gendered, because they experience their confinement in specific ways and are often at risk of heightened gender- based discrimination, stigma and violence. How women experience this deprivation will also differ, not only as a result of gender dynamics but also because of characteristics, such as age, disability, race or ethnicity or socioeconomic status, that combine to produce distinct forms of discrimination and vulnerability. The Working Group also added that the heightened policy of certain populations, owing to racial and ethnic biases intersecting with gender, poses risks for some women. Women from racial and ethnic minorities and indigenous women face specific and deeply damaging stereotypes and are disproportionately targeted for control.

In relation to these concerns, the Working Group has recommended Member States to re-evaluate and reform laws and practices that tend to disproportionately or differently target, police and criminalize any particular group of women, and create accountability mechanisms to prevent, mitigate and remedy the discriminatory application of the law.

We would also like to bring to the attention of your Excellency’s Government the international standards regarding the protection of the rights of persons belonging to minorities. In particular, Article 27 of the ICCPR protects persons who belong to ethnic, linguistic and religious minorities to enjoy their own culture, use their own language, and practice their own religion with other members of their group. This

right imposes positive obligations on states not to deny the exercise of these rights among themselves. Article 26 of the ICCPR contains a general right to equality without discrimination on ground, such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as religion.

We also take this opportunity to remind you of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1.1 of the UN Declaration requires that States protect the existence and the national or ethnic, linguistic or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1, stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination. Article 2.2 further notes that persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

We wish to emphasize article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by your Excellency's Government on 27 March 2001 which guarantees everyone the right to take part in cultural life without discrimination. According to General Comment Number 21 of the Committee on Economic, Social and Cultural Rights, this includes the right of everyone "to choose his or her own identity, ...to engage in one's own cultural practices and to express oneself in the language of one's choice." (para. 15(a)). The Committee has also highlighted that "in particular, no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity." (para. 22) Additionally, the Committee notes that States parties must "recognize, respect and protect minority cultures as an essential component of the identity of the States themselves." (para. 32) Moreover, "[a]ny programme intended to promote the constructive integration of minorities and persons belonging to minorities into the society of a State party should... be based on inclusion, participation and non-discrimination, with a view to preserving the distinctive character of minority cultures." (para. 33) Undoubtedly, as the Committee underscored, the obligations under article 15 include the right not to be subjected to forced assimilation (para 49).

We wish to reiterate that article 18 (1) of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion. Human Rights Committee in its General Comment 22, paragraph 8 clarified that "persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances."

In relation to the allegations of violations of the right to the highest attainable standard of health, we would like to refer to China's obligations under article 12 of the ICESCR. In this connection, the Committee on Economic, Social and Cultural Rights, in its General Comment 14 (E/C.12/2000/4), indicates that States have an obligation to refrain from applying coercive medical treatments and medical experimentation and they should refrain from using health services as a punitive measure (paras 8 and 34). In this connection, the right to health includes the right to informed consent; guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services (A/64/272, para.18).

Under ICESCR article 12, States also have the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services. The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), adopted unanimously by the UN General Assembly (A/Res/70/175), further refer to States' responsibility to provide health care for prisoners (Rules 24 to 35) and affirm that prisoners are entitled to the same standards of health care that are available in the community, free of charge and without discrimination (Rule 24.1). They further stress that every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination (Rule 42). Rule 32 in particular establishes the duty of protecting prisoners' physical and mental health on the basis of clinical grounds only and the duty of adhering to prisoners' autonomy with regard to their own health and informed consent (Rule 32). Finally, Rule 81.3 indicates that women prisoners shall be attended and supervised only by women staff members. The Bangkok Rules state that "gender-specific health-care services" should be provided to women prisoners (Rule 10).

Furthermore, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Forced nudity is a recognized form of sexual violence which can also amount to torture or to cruel, inhuman or degrading treatment or punishment prohibited by article 7 of the International Covenant on Civil and Political Rights. The Mandela Rules and the Bangkok Rules specify that cavity searches are to be conducted only when absolutely necessary, in private, by health professionals or, at a minimum, by appropriately trained staff, of the same sex as the prisoner. The Bangkok Rules provide that "[e]ffective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches..." (Rule 19) and that "[a]lternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches" (Rule 20).

In the report on its visit to China (A/HRC/26/39/Add.2), the Working Group on discrimination against women and girls received reports of discrimination against groups of ethnic minority women in China, who suffer multiple forms of discrimination, both as women and as members of a minority group. It expressed concerns at reports of unmarried Uighur women as young as 16 being forced to

participate in a labour transfer programme from the Xinjiang Uighur Autonomous Region to urban factories in eastern China, enduring appalling working conditions, which has led to some families in the region arranging the marriages of their daughters to older men in order to escape transfer to the factories.