

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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 Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL CHN 5/2021

10 June 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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 Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 44/4, 42/22, 45/3, 42/16, 43/8, 40/10, 40/16, 43/20 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **forced organ harvesting targeting ethnic, religious or linguistic minorities such as Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians in detention.**

In this context, we would like to note previous communications, addressed to your Excellency's Government, on this matter, specifically on 11 August 2006 (CHN 30/2006) and on 25 January 2007 (CHN 7/2007). We would like to thank your Excellency's Government for the replies dated 28 November 2006, and 19 March 2007, and we regret that the responses did not provide official statistics on transplantations, waiting times for organ allocation, or sources of organs. In this context, the lack of available data and information-sharing systems are obstacles to the successful identification of victims and prosecution of traffickers.

In 2013, the Report of the Special Rapporteur on trafficking in persons, especially women and children, to the General Assembly (A/68/256), on the issue of trafficking in persons for the removal of organs, raised concerns about the harvesting by States of organs of persons who have been or are being executed. It was noted that consistent and credible evidence of such allegations had emerged (paras. 31-32).

According to the information received:

Forced organ harvesting in China targets a number of ethnic, religious or linguistic minorities such as Falun Gong practitioners, Uyghurs, Tibetans,

Muslims and Christians held in detention at different locations. It is alleged that lists of prisoners' names are maintained for the purpose of forced organ harvesting at the detention centres. Further, it is alleged that if prisoners or detainees are hospitalised, they are at risk of forced organ harvesting. The most common organs removed from the prisoners are allegedly hearts, kidneys, livers, corneas and, less commonly, parts of livers. This form of trafficking reportedly involves health sector professionals, including surgeons, anaesthetists, and other medical specialists.

It is further alleged that prisoners or detainees who belong to the aforementioned ethnic, religious or linguistic minorities, are frequently arrested without being informed of the reasons for the arrest or provided with arrest warrants, and are subjected to blood tests and organ examinations, including ultrasounds and x-rays, without their informed consent. Such alleged practices are credible indicators of forced organ harvesting. The results of the examinations are reportedly registered in a database of living organ sources that facilitates organ allocation. It is also reported that some of these prisoners or detainees have been subject to enforced disappearances after their arrests.

The alleged practice of subjecting prisoners or detainees to frequent examinations without their prior informed consent was reportedly documented in at least the following facilities: female prison in Urumqi called "Sankan" (the No 3 prison); No.2 detention centre at Urumqi and Karmay prison.

It is also alleged that some prisoners receive death threats and threats of organ harvesting from the police, if they do not renounce their beliefs or refuse to cooperate with the police.

Individual cases of forced medical examination targeting members of minority groups in detention

Ms. Gulbakhar Jalilova

There are previous communications, addressed to your Excellency's Government, on the case of Ms. Gulbakhar Jalilova, specifically sent on 10 February 2021 (CHN 21/2020). We would like to thank your Excellency's Government for the reply received on 3 June 2021.

CHN 21/2020 letter was a follow up of 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);

¹ OL CHN 18/2019

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).

According to the new information received, Ms. Jalilova was reportedly subject to forced organ examinations without her informed consent.

On 22 May 2017, she was allegedly transferred to a female prison in Urumqui called “Sankan” (the No.3 prison). On the night of her arrival to prison, she was reportedly stripped naked for medical examination blood and urine samples were taken before placing her in the cell. Reportedly, she was taken regularly to the prison hospital for medical examinations together with other prisoners wearing black hoods over their heads to an unknown place where they underwent medical examination.

It is alleged that on 27 August 2017, Ms. Jalilova was transferred to the No 2 Detention Centre also in Urumqui. At No.2 detention centre, she was reportedly brought to a large medical clinic, where Ms. Jalilova continued to be subjected to medical examinations, such as blood tests and ultrasound tests. Reportedly, she received injections every 10 days and a full check-up once a month, in addition to a chest x-ray. When she inquired on the type and purpose of medical examinations, she was allegedly told to keep quiet and refrain from asking questions.

Mr. Omir Bekali

On 26 March 2017, Mr. Bekali, a 44 year-old Uyghur Kazakhstani national, was allegedly arrested from his family house at Pichan without an arrest warrant and brought to Karmay Prison where he was allegedly told that he was accused of terrorism offences.

Upon arrest, Mr. Bekali was taken to a clinic handcuffed and with a black hood over his head. There, he was subjected to what was described as a full body check, including blood tests, ultrasounds on kidneys, heart and lungs. During medical examinations, a black hood was kept on his head.

Throughout his detention, blood samples were allegedly taken from Mr. Bekali on a monthly basis. He was also subjected twice to a full body examination and an ocular exam. On 4 November 2017, he transferred to Karmay Re-education Camp for 20 additional days before his release.

Since 2006, your Excellency’s Government has announced multiple reforms reportedly designed to bring the national organ-procurement system in line with international standards. Those reforms include; the Interim Provisions on Clinical Applications and Management of Human Organ Transplantation (2006); the Regulation on Human Organ Transplantation (2010) and the pilot of voluntary donation system (2010). However, concern remains at the lack of independent oversight on whether the consent to donation and organ allocation

is effectively given by prisoners or detainees. It is also reported that families of deceased detainees and prisoners are prevented from claiming their bodies.

While we do not wish to prejudge the accuracy of the information received, we wish to express our utmost concern at the alleged regular and forced medical examination targeting ethnic, religious or linguistic minorities such as Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians in detention, without their consent; and the alleged enforced disappearance of some detainees, which appears to be related to the allegedly illegal acquisition of prisoners' organs, for the purpose of organ trafficking. We are also concerned at the discriminatory treatment of the prisoners or detainees based on their ethnicity and religion or belief.

We would like to remind your Excellency's Government of the concluding observations of Committee Against Torture, Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, and Committee on the Elimination of Racial Discrimination (CAT/C/CHN/CO/5, CRC/C/CHN/CO/3-4, CEDAW/C/CHN/CO/7-8, CERD/C/CHN/CO/14-17) highlighting concerns about the practice of removing organs from prisoners of certain ethnic or religious groups and the lack of clarity as to whether domestic law criminalizes all forms of trafficking.

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 legal grounds for the performance of medical examinations on prisoners or detainees particularly on the basis of their ethnic, religious or linguistic characteristics such as Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians.
3. Please provide additional information on the factual and legal basis for the arrest and detention of Mr. Omir Bekali.
4. Please provide information on the procedure followed to request and ensure the free and informed consent of prisoners or detainees in connection to medical examinations. Also, please explain the purpose of such medical examinations targeted at prisoners or detainees belonging to minority groups and the reason for which the prisoners or detainees are not informed of the results.
5. Please, provide information on the assurances taken for avoiding a conflict of interest of physicians by prohibiting that physicians who determine the death of a potential donor would be involved in removing an organ from that donor or in the care of the intended recipient.

6. Please provide information on the legislative amendments to prohibit all forms of trafficking in persons, and provide effective and appropriate victim protection services, including in prisons and detention center, and their implementation.
7. Please provide information on measures adopted to guarantee the need for donation and transplantation activities to be transparent and open to scrutiny, while protecting the personal anonymity and privacy of donors and recipients.
8. Please indicate how your Excellency's Government is ensuring that organ trafficking is given appropriate attention within anti-trafficking programmes and policies and that efforts to address it are provided with adequate resources.
9. Please provide information of how data is collected to prevent abuse of transplantation systems, such as registries of donors, waiting lists of recipients numbers transplantations, donor consent and monitoring compliance.
10. Please provide information on the investigations of the reported incidents in relation to organ harvesting and how does your Excellency's Government ensure that victims and survivors of organ trafficking are provided with appropriate and urgent healthcare, as well as physical, psychosocial and legal services.
11. Kindly indicate whether your Excellency's Government delivers specialized training on trafficking in persons to relevant actors (such as law enforcement, judicial authorities, medical personnel, hospital administrators) including on acceptable forms of evidence in the medical surgery field, to strengthen national capacities to detect, investigate and prosecute such form of trafficking.
12. Please indicate the steps taken by your Excellency's Government to ensure that prisoners or detainees are not discriminated or targeted based on their culture, religions or beliefs, or language

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

While awaiting a reply, we appeal that your Excellency's Government safeguard the rights of Ms. Gulbakhar Jalilova and Mr. Omir Bekali from irreparable harm and without prejudicing any eventual legal determination. It is relief pendente lite.

We also urge that, if the investigations support or suggest the allegations to be correct, all necessary measures be taken to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case 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 to the allegation letter and the regular procedure.

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

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer to the Universal Declaration of Human Rights, which provides that everyone has the right to life, liberty and the security of person.

We would also like to bring to the attention of your Excellency's Government, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which your Excellency's Government accepted in 2010. It defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, refer to access to reparation measures, "States shall ensure that trafficked persons are given access to effective and appropriate legal remedies."

We wish to refer to Articles 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, acceded by your Excellency's Government in 1981.

We would also like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

We would also like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, the Working Group recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, 11 and 12, which relate to

the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention, including transfers, being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons.

We would also like to bring to the attention of your Excellency's Government article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. We would also like to refer to Article 6 which states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." In this context, we 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 whether perpetrated by a State official or a private citizen, in public or private life. We would also like to refer to CEDAW General Recommendation General recommendation No. 38 on trafficking in women and girls in the context of global migration.

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), which your Excellency's Government ratified on 4 October 1988. 27 March 2001

Furthermore, we would like to refer your Excellency's Government to the International Covenant on Economic, Social and Cultural Rights (ICESC), ratified by China on 27 March 2001, which in its article 12 provides for the right to mental and physical health. This includes an obligation on the part of all States parties to *respect* the right to health by, *inter alia*, refraining from applying coercive medical treatments (General Comment 14 of the Committee on Economic, Social, and Cultural rights, para 8 and 34). In this connection, we would like to refer to the UN Standard Minimum Rules for the Treatment of Prisoners adopted unanimously by the UN General Assembly (A/Res/70/175) in December 2015 ("Mandela Rules"). Rules 24 to 35 establish that healthcare for prisoners is a State responsibility; recognize an absolute prohibition of torture and ill treatment including the reemovment of a prisoner's cells, body tissues or organs; and requires adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship.

We would also like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that

States are under the obligation to *respect* the right to health by, *inter alia*, refraining from applying coercive medical treatments,

We would also like to refer to the Guiding Principles on Human Cell, Tissue and Organ Transplantation of the World Health Organization (WHO Guiding Principles). The WHO Guiding Principles provide guidance for organ transplantation from both deceased and living donors, including regarding standards of consent to donation and organ allocation, as well as regulating donation and transplantation activities to prevent organ sale and purchase.