

Mandates of the Special Rapporteur on the situation of human rights defenders and the Working Group on Arbitrary Detention

Ref.: AL CHN 8/2022
(Please use this reference in your reply)

23 September 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 43/16 and 42/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention and prosecution of human rights defender and lawyer **Chang Weiping**.

Mr. Chang Weiping is a human rights defender and lawyer from Baoji City, Shanxi Province. He has been a vocal advocate for the rights of lawyers in China and the rule of law. In his work as a lawyer, he has defended other human rights defenders and provided pro bono legal counsel for victims of defective vaccines, as well as women, LGBT persons, and persons living with HIV/AIDS and hepatitis B who face discrimination in the workplace.

In January 2020, Mr. Chang was arrested and placed under residential surveillance at a designated location (RSDL), in conditions amounting to enforced disappearance. On 12 January 2020, his license to practice law was annulled. He was released on bail pending further investigation after one week, suspected of subverting State power. During this period of enforced disappearance, Mr. Chang was allegedly subjected to treatment amounting to torture, which he detailed and denounced, along with harassment he and his family had allegedly been subjected to following his release, in a video published on YouTube in October 2020. Subsequent to his publication of this video, Mr. Chang was re-arrested and placed once again in RSDL.

Grave concerns as to the apparent arbitrary nature of the detention of Mr. Weiping, under conditions amounting to enforced disappearance, as well as his alleged ill-treatment potentially amounting to torture, his prosecution and the violation of due process guarantees in his case have previously been addressed to your Excellency's Government through two communications from Special Procedures mandate holders (see AL CHN 20/2020 and AL CHN 4/2021). While we appreciate the comments provided by your Excellency's Government in response to these communications, we remain extremely concerned in light of the following allegations regarding developments in Mr. Chang's case since our last communication on the matter. We also note that further information on individual cases documented in communication AL CHN 4/2021, as stated to be forthcoming in the response of your Excellency's Government to this communication, has not been received. We urge your Excellency's Government to provide detailed information on these cases.

In addition, we note the multiple previous communications addressed to your Excellency's Government by Special Procedures mandate holders concerning alleged violations of the rights of human rights lawyers in China (see, among the most recent such communications, CHN 2/2022, CHN 16/2020, CHN 9/2019). We acknowledge

the responses of your Excellency's Government to these communications.

According to the new information received:

In April 2021, Mr. Chang was transferred from residential surveillance at a designated location to Feng County Detention Centre, Baoji City, Shaanxi Province. Prior to this, his family or lawyers had not been informed of his whereabouts since his detention in October 2020.

On 23 July 2021, several of Mr. Chang's family members and his lawyer at the time travelled to Feng County in an attempt to meet Mr. Chang and provide him with money to spend on food and other items in prison. Mr. Chang's family members travelled approximately 1,900 km from their place of residence to make this visit. Upon arrival at the Feng County Detention Centre, their request to see Mr. Chang and provide him with money were denied without a legal justification being provided. During the same trip, while attempting to lodge a complaint against the Baoji police with the Shaanxi Provincial Procuratorate over their handling of Mr. Chang's case, Mr. Chang's lawyer and family members were told that the Procuratorate would not intervene as a result of the sensitivity of the case.

On 6 September 2021, investigating police transferred the case against Mr. Chang to the Baoji Municipal People's Procuratorate for review within a maximum of one month and 15 days. In response to Mr. Chang's family being informed of this development, they contacted Feng County Detention Centre to request a meeting between Mr. Chang and his lawyer, however, this request was denied, with Covid-19 restrictions provided as justification.

On 8 September 2021, Mr. Chang was questioned by a procurator from the Baoji Municipal People's Procuratorate. On 9 September 2021, his lawyer went to the Procuratorate office to examine Mr. Chang's case file, as provided for by Chinese procedural law once a procuratorate begins its review of a case. After having been denied access to the building due to Covid-19 restrictions, the lawyer was told that examination of case files required prior approval of the responsible procurator and the investigating body over the case, and that files could only be consulted electronically at the procuratorate offices due to the sensitivity of the information contained in them. As a result, Mr. Chang's lawyer was unable to consult the case file.

On 14 September 2021, Mr. Chang was granted a meeting with his lawyer for the first time since his detention approximately 11 months previous. He was thereafter able to meet with his legal representative on three further occasions. As of this month, Mr. Chang reported suffering from bloody stool, which had not been a health issue for him prior to his detention.

On 22 October 2021, Mr. Chang's family were informed, after contacting Feng County Detention Centre to request information, that the human rights defender's case had been sent back to the police by the procuratorate for further investigation, with this to be completed within a maximum of two months.

In December 2021, Mr. Chang received a basic examination in relation to his health problems, however, during a video call with his lawyer six months later, on 22 June 2022, he informed his legal representative that his health problems had continued. Following this, on 1 July 2022, Mr. Chang's family contacted Feng County Detention Centre to officially request that the human rights defender receive a comprehensive medical examination as a matter of urgency. One day prior to the video call between Mr. Chang and his lawyer, his legal representative had been granted access to his case file for the first time, but only upon condition that he sign a confidentiality agreement preventing him from revealing any of the details of the case against Mr. Chang, including to his family members. No legal basis was provided to justify this requirement.

On 26 July 2022, Mr. Chang stood trial in closed proceedings at the Feng County People's Court, Shaanxi Province, charged with subversion of State power under article 105(1) of the Criminal Law. The proceedings ended without a verdict. Mr. Chang's family members, who had driven approximately 2,000km from their place of residence in an attempt to attend the trial, were physically blocked by State security officers for ten hours while driving towards the courthouse, preventing them from attending the proceedings. No justification for the closed nature of the proceedings was provided to Mr. Chang's lawyer in the notification he was provided for the trial. Article 105(1) of the Criminal Law provides for sentences of 5 years imprisonment and upwards, with no upper limit specified and extended sentences possible if the defendant is deemed a “ringleader”.

Without wishing to prejudge the accuracy of the information received, we express our grave concern as to the ongoing detention of Mr. Chang and his trial being closed doors on national security charges, which we fear to be directly linked with his work as a human rights lawyer and testimony regarding the torture he was allegedly subjected to while detained in 2020. Our concerns in this regard are aggravated by the apparent violations of due process guarantees in Mr. Chang's case, which would strongly indicate the violation of his right to a fair trial. We reiterate our serious concerns, as communicated to your Excellency's Government in previous communications (see, notably, CHN 4/2021) as to the vague and broad nature of the concept of “ringleader” in the Criminal Code and the lack of an upper limit on the length of imprisonment foreseeable in article 105(2). We are further concerned as to the status of his health in detention and his access to appropriate medical care.

In connection with the above alleged facts and our related 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.

We are issuing this appeal in order to safeguard the rights of Mr. Chang from irreparable harm and without prejudicing any eventual legal determination.

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 as to the allegations that Mr. Chang's family were forcibly prevented from attending the court proceedings concerning him, and the legal and factual justification for any such restrictions. Please also provide information as to the legal and factual justification for holding his trial behind closed doors and how this measure conforms with Mr. Chang's right to a fair trial.
3. Please provide information relating to the provision of adequate medical care to Mr. Chang, including the date of his most recent medical examination.

We would appreciate receiving a response within 60 days. Past 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.

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.

Further, 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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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). In particular, we would like to highlight articles 5, 8, 9, 10 and 19 of the UDHR, which guarantee the rights to freedom from torture or other cruel, inhuman or degrading treatment or punishment, to an effective remedy for violations of fundamental rights, to freedom from arbitrary arrest or detention, to a fair and public hearing by an independent and impartial tribunal, and to freedom of expression. These rights are reflected in articles 2, 7, 9, 14 and 19 of the ICCPR.

We would further like to refer your Excellency's Government to the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China on 27 March 2001. In particular, we would like to highlight articles 6 and 12 of the Covenant, which guarantee the right to work and to the highest attainable standard of physical and mental health. Article 12 of the Covenant, as noted by the Committee on Economic, Social and Cultural Rights in its General Comment No. 14, para. 34, includes an obligation on States to refrain from denying or limiting equal access for all persons, including detainees, to medical care.

We would like to remind your Excellency's Government of 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, which state that 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.

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 paragraph (b), which guarantees the right to freely publish, impart or disseminate views, information and knowledge on human rights and fundamental freedoms; and article 6 paragraph (c), which guarantees the right to study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and to draw attention to these matters. We would also like to make explicit reference to article 9 of the Declaration, and its third clause in particular, which in its paragraph (c) states that everyone has the right, individually and association with others, to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. Finally, we would like to reference article 11 of the Declaration, which states that everyone has the right, individually and in association with others, to the lawful exercise of his

or her occupation or profession.