

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL CHN 5/2023
(Please use this reference in your reply)

12 May 2023

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 51/8, 52/9, 52/4 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of human rights defenders and lawyers Messrs. Xu Zhiyong, Ding Jiaxi and Qin Yongpei.

Mr. **Xu Zhiyong** is a human rights defender and legal activist who has worked since 2003 to promote a culture of peace and non-violence, provide legal assistance to the homeless and individuals facing the death penalty and advocate for legal reform in China. He founded the "Open Constitution Initiative", which later gave rise to the "New Citizen's Movement", a network of human rights defenders, academics, lawyers and other activists to discuss human rights, political reform, social justice and democracy. Mr. Xu was sentenced to four years in prison in 2013 for "gathering crowds to disrupt public order" (article 290 of the Criminal Law of the People's Republic of China, hereafter referred to as "the Criminal Law") in relation to his activities with the New Citizen's Movement.

Mr. Xu has been the subject of eight communications sent to your Excellency's Government (CHN 2/2022, CHN 4/2021, CHN 8/2020, CHN12/2013, CHN 8/2013, CHN 29/2010, CHN 21/2009 and CHN 10/2006). We thank your Excellency's Government for the replies received to these communications, but we regret not having received a response to one of them, UA CHN 29/2010.

In its Opinion 82/2020, the Working Group found Mr. Xu's deprivation of liberty arbitrary in contravention of articles 2, 3, 7, 9, 10, 11(1) and (2), 12,19, 20(1) and 21(1) of the Universal Declaration of Human Rights, falling within categories I, II, III and V of the Working Group.

Mr. **Ding Jiaxi** is a human rights lawyer who, prior to his arrest, held a prominent role in the New Citizens' Movement. In the past, he has promoted the rights of children of migrants. He has previously campaigned for fairer governance, greater State transparency and increased equality in the education system. On 18 April 2014, Mr. Ding was sentenced to three and a half years in prison for "gathering a crowd to disrupt order" (article 290 of the Criminal Law), after peacefully exercising his right to protest and over his role in small-scale demonstrations associated with the New Citizens Movement. He has been the subject of five previous communication sent to Your Excellency's Government (CHN 2/2022, CHN 4/2021, CHN 6/2020,

CHN 7/2014 CHN 8/2013). We thank your Excellency's Government for the replies received to these communications.

In its opinion 30/2021, the Working Group on Arbitrary Detention found that Mr. Ding's detention was arbitrary in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights, falling within categories I, II, III and V.

Mr. **Qin Yongpei** is a human rights defender and lawyer from Nanning City in the Guangxi Zhuang Autonomous Region. He has been a vocal critic on social media of alleged Government corruption, human rights violations and abuse of power in China. In his legal work, he has defended other human rights lawyers and acted on behalf of protestors detained in connection with demonstrations against environmental pollution allegedly caused by State-owned mining companies.

Mr. Qin had his license to practice law revoked by the Guangxi Justice Bureau in May 2018, which also ordered to shut his legal practice. He has been the subject of three previous communication sent to Your Excellency's Government (CHN 2/2022 CHN 4/2021 and CHN 20/2020). We thank the Government for the replies received to all of these communications.

In its opinion 41/2022, the UN Working Group on Arbitrary Detention found that Mr. Qin was being detained arbitrarily because his fair trial rights had not been guaranteed and that the charge he faced was "an impermissibly vague provision" of the Chinese Criminal Law. It further found that the "only plausible explanation for Mr. Qin's arrest and detention is that he is being punished for the exercise of his rights to freedom of expression and of association, which are protected by articles 18, 19 and 20 of the Universal Declaration of Human Rights." The deprivation of his liberty was found to be falling within categories I, II, III and V of the Working Group.

According to the information received:

Xu Zhiyong and Ding Jiayi

On 10 April 2023 the Linshu County Court in Linyi City, Shandong, found Xu Zhiyong and Ding Jiayi guilty of "subversion of state power" under article 105(2) of the Criminal Law of the People's Republic of China and sentenced them to 14 and 12 years in prison respectively.

Both men were arrested after convening an informal, private gathering of human rights defenders in Xiamen in December 2019, which addressed issues including the rule of law, democratic reforms, and human rights in China. Mr. Ding was detained in December 2019 while Mr. Xu was detained in February 2020 on suspicion of "subversion of state power".

Both men were detained in pre-trial detention for over three years. During the first thirteen months of their detention, they were reportedly denied access to lawyers. It is alleged that both men were subjected to "residential surveillance in a designated location" (RSDL), a form of secret detention without access to family members or a lawyer. The use of RSDL has been found by the UN Working Group on Arbitrary Detention and the UN Working Group on Enforced or Involuntary Disappearances to amount to a form of enforced

disappearance.¹

It has been further alleged that Ding Jiayi and Xu Zhiyong were subjected to torture while undergoing RSDL. Mr. Ding was allegedly interrogated for 21 hours a day while fastened to a chair from 1-8 April 2020 and subjected to prolonged sleep deprivation. Mr. Xu was also allegedly interrogated for over ten hours a day while tied to a chair and subjected to prolonged sleep deprivation.

Mr. Xu and Mr. Ding were arrested on 19 June 2020; on 22 and 24 June 2022 respectively, they were tried in a one-day closed door trial. The defendants' lawyers were asked to sign a confidentiality agreement prior to the trial to prevent them from discussing it afterwards. Mr. Ding unsuccessfully applied to have confessions that he made dismissed on the grounds that they were extracted under torture. According to sources, his relatives were not provided with a full text of the verdict against him.

Qin Yongpei

On 31 March 2023, Qin Yongpei was sentenced to five years in prison by the Nanning Municipal Intermediate Court in Guangxi province, having been convicted of “inciting subversion of state power” under article 105(2) of the Criminal Law. Mr. Qin was arrested on 31 October 2019, the same day on which his home and office were raided.

Prior to his detention, Mr. Qin had been calling for the release of lawyers in detention in China, and was vocal on politically sensitive subjects including the pro-democracy protests in Hong Kong. On 1 November 2019, Mr. Qin was placed in pre-trial detention, and was not informed of the reasons for his arrest or the charges against him.

During the following month, requests by his two lawyers to meet with their client were refused by the Nanning Public Security Bureau. No written reasons for the refusals were provided. Further requests for information as to the alleged crime under which Mr. Qin had been detained were denied, on the basis that State secrets may be potentially leaked if Mr. Qin was allowed to consult his lawyers. Subsequent challenges submitted by the two lawyers at the Nanning public prosecutor's department as to the conformity of these refusals with Chinese law and the rights of lawyers and suspects were rejected.

On 3 December 2019, Mr. Qin was formally arrested on the charge of “inciting subversion of state power” under article 105(2) of the Criminal Law with the indictment allegedly making reference to postings by Mr. Qin on social media platforms, as well as alleged plans by a group of disbarred Chinese lawyers, including Mr. Qin, to organize a moot court.

Mr. Qin's trial took place on 31 December 2021, with his family and lawyers only being informed of the trial on 27 December 2021.

¹ https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_15.pdf

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern regarding the conviction and sentencing of Xu Zhiyong, Ding Jiayi and Qin Yongpei. The arrest, conviction and sentencing of human rights defenders for carrying out their legitimate work, or the exercise of human rights, under the pretext of national security is incompatible with international human rights law. Further, the prosecution of lawyers for their legal work is impermissible. Given that all three human rights defenders named in this communication were convicted of “inciting subversion of State power” or “subversion of State power”, which falls under China’s national security legislation, we reiterate our alarm at the continued use of national security provisions of the Criminal Code to restrict the rights to freedom of expression, association, and peaceful assembly. These rights are enshrined in articles 19 and 20(1) of the Universal Declaration of Human Rights, and in this regard we also wish to refer to 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 articles 1, 2, 5, 6 and 12.

We would also like to reiterate our concern regarding the practice of imposing Residential Surveillance in a Designated Location without access to a lawyer or 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.

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 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).

We further express grave concern over Messrs. Xu Zhiyong and Ding Jiayi’s reports of torture and ill-treatment while in RSDL and urge your Excellency’s Government to investigate any such allegations and prosecute alleged perpetrators.

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 detailed information with regard to the arrest, charges and conviction of Xu Zhiyong, Ding Jiayi and Qin Yongpei, and indicate the measures undertaken by the Chinese authorities to ensure the application of due process and the effective protection of the rights of the three human rights defenders before the law; please comment on why the trials of Xu Zhiyong, Ding Jiayi and Qin Yongpei were held in camera and what provisions under international and domestic law permitted this
3. Was the full text of the verdict in the trials of Xu Zhiyong, Ding Jiayi and Qin Yongpei provided to their family and lawyers? If yes, when were they given and can they be made available to UN Special Procedures?
4. Please provide detailed information on the detention condition of Xu Zhiyong, Ding Jiayi and Qin Yongpei and the measures undertaken to ensure their physical and mental integrity and to protect them against torture and other cruel, inhuman or degrading treatment or punishment. In those cases where it is alleged that torture and other cruel, inhuman or degrading treatment or punishment has been conducted against them, please indicate any inquiry or investigation that has been undertaken and its outcome;
5. Please provided updated information with regard to the state of health of Xu Zhiyong, Ding Jiayi and Qin Yongpei, as well as the measures undertaken to ensure their access to appropriate and adequate medical care while in detention.

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.

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.

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

Matthew Gillett

Vice-Chair on Communications of the Working Group on Arbitrary Detention

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

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 articles 9 and 10 of the Universal Declaration on Human Rights which prohibits in absolute terms arbitrary arrest and guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

With regard to article 9 of the UDHR, we would also like to remind your Excellency's Government that it is both a norm of customary international law and peremptory norm of international law. In this regard, the use of prolonged incommunicado detention, including in unknown or unofficial detention settings that routinely deny access of detainees to their families or legal representatives of their choice could constitute one of the worst forms of arbitrary detention. The reported consistent failure to present detainees promptly before an impartial judge inherently violates the international standards relating to the right to liberty and security of the person and to arbitrary detention. In this regard, detention pending trial shall be the exception, not the rule, and it should be based on the individual circumstances of the case and subject to judicial oversight.

Attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with human rights norms and standards. Additionally, as per the jurisprudence of the Working Group on Arbitrary Detention, any detention due to the peaceful exercise of rights is arbitrary, and enforced disappearances constitute a particularly aggravated form of arbitrary detention. We would like to further remind your Excellency's Government that the right to challenge the lawfulness of detention before a court is a self-standing human right and a peremptory norm of international law, which applies to all forms of arbitrary deprivation of liberty.

We would 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 articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 6(b) and (c) of the same Declaration provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental

freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

Finally, we would like to refer to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990. The Basic Principles require governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference, and to prevent the prosecution of lawyers for any action taken in accordance with recognized professional duties, standards, and ethics (principle 16).

The Basic Principles include a specific provision on the exercise of fundamental freedoms, stating that like other individuals, lawyers “are entitled to freedom of expression, belief, association and assembly”, and have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights (principle 23).