

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL CHN 11/2023
(Please use this reference in your reply)

21 July 2023

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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 52/4, 51/8, 51/21 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 arbitrary detention of the human rights defender Li Yuhan**.

Ms. **Li Yuhan** is a lawyer and human rights defender. She is in her seventies. In her legal work, she has represented victims of human rights violations in China, including other human rights lawyers faced with criminal investigations and processes in alleged retaliation for their legal and human rights activities. Her detention was declared arbitrary by the UN Working Group on Arbitrary Detention in October 2018 (opinion no. 62/2018).

Concerns relating to the prosecution of human rights lawyers in China in retaliation for their legal work have been raised with your Excellency's Government on multiple previous occasions, including, most recently, CHN 5/2023, CHN 8/2022, CHN 2/2022, CHN 16/2020 and CHN 9/2019. We acknowledge the responses of your Excellency's Government to these communications and appreciate the continued engagement of China with Special Procedures mandate holders. However, we express our serious concern at the clear demonstration from these communications of a trend of repression of human rights lawyers in the country.

According to the information received:

On 9 October 2017, Ms. Yuhan was arrested and placed under criminal detention in Shenyang City, Liaoning Province. At the time of her detention, the charges she faced were unknown, however, it was later revealed that she was accused of “picking quarrels and provoking trouble”, a charge carrying a maximum five-year sentence under article 293 of the Criminal Code, and “fraud”.

Following her arrest, no notice was provided by the authorities to Ms. Yuhan's family. During her first month of detention, Ms. Yuhan was held incommunicado and denied access to lawyers appointed by her family. In November 2017, when her lawyers were able to visit her for the first time, she was suffering from ill-treatment. This included the denial of warm water for

washing, forcing her to shower with cold water, the denial of adequate food and drinking water, and restrictions on her access to medicines needed for several health problems she suffers from, including cardiovascular and gastric issues. This ill-treatment has reportedly continued over the course of Ms. Yuhan detention, resulting in a significant deterioration in her state of health, including in her liver function, eyesight and hearing. She has reportedly suffered three heart attacks since her arrest.

In February 2018, Ms. Yuhan launched a hunger strike in protest at her detention and the delays in providing her with medicine necessary to address her health issues.

Ms. Yuhan's trial was initially scheduled for 9 April 2019, however, it was cancelled three days prior to the date and subsequently delayed on several occasions, before finally being held two and a half years later, in October 2021. Human rights defenders and lawyers seeking to observe the trial were blocked from entering the courthouse by police.

Despite over twenty months having passed since the conclusion of the trial, no verdict has been issued in Ms. Yuhan's case, frustrating her right to appeal and seek remedy for her arbitrary detention. She is currently detained at Shenyang City Detention Centre. Despite the human rights defender's advanced age and serious health issues, numerous applications by her lawyers seeking her bail on medical grounds have been denied.

Without wishing to prejudge the accuracy of the information received, we express our grave concern as to the arrest and ongoing arbitrary detention of Ms. Yuhan. Our concerns in this regard are aggravated by the apparent violations of due process guarantees in Ms. Yuhan's case, including the denial of her access to lawyers of her own choosing; the failure to promptly inform her of the charges she faced; and the failure of the State to guarantee Ms. Yuhan a trial within a reasonable time. Our concerns as to the extremely extensive delays in her case are compounded the reported ill-treatment to which Ms. Yuhan has been subjected while detained, raising serious concerns as to her state of health.

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 as to Ms. Yuhan's state of health and the measures taken to ensure her right to health in detention, including through access to necessary medication and appropriate treatment.

3. Please provide information as to the reason for the reported extensive delay in guaranteeing Ms. Yuhan a trial before a competent court and in the issuing of a verdict following the eventual trial proceedings. Please explain how these delays are compatible with international human rights law and standards.
4. Please provide information as to any investigation carried out into the alleged ill-treatment of Ms. Yuhan in detention, including concerning her alleged denial of access to warm water for showering, as well as access to sufficient food, drinking water and necessary medicines. Please provide information as to any measures undertaken to provide redress for Ms. Yuhan and ensure accountability in light of any investigations carried out.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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). In particular, we would like to highlight articles 5, 8, 9 and 10 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 and to a fair and public hearing by an independent and impartial tribunal. These rights are reflected in articles 7, 9 and 14 of the ICCPR.

We would further like to refer your Excellency's Government to the International Covenant on Economic, Social and Cultural Rights, 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.

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 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.

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. The denial of access to lawyers of one's 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.

Moreover, we would like to remind your Excellency's Government of its obligation to protect lawyers and enable them to exercise their functions freely in accordance with Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September

1990. Principles 1, 2, 7-8, in particular, contain the States' obligations to ensure prompt and effective access to lawyers. Principle 16 requires 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 lawyers from being threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards, and ethics. Principle 18 expressly provides that lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions. According to principle 21, it is the duty of the competent authorities to ensure lawyers access to appropriate information, files, and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.