

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

Ref.: AL CHN 6/2024
(Please use this reference in your reply)

8 April 2024

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 promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 52/4, 51/8, 52/9 and 53/12.

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 of woman human rights defender **Xu Yan** and human rights lawyer **Yu Wensheng**, and the conditions they are subjected to in detention.

Xu Yan is a woman human rights defender, who began advocating for human rights in 2014 in response to her husband, human rights lawyer Yu Wensheng's arrest, and became more involved in such advocacy in 2015 in response to the "709 crackdown" against human rights lawyers in China. Following the arrest of Yu Wensheng in 2018, Xu Yan furthered her advocacy, travelling throughout the country to raise awareness of her husband's case and those of other detained human rights lawyers.

Yu Wensheng is a prominent human rights lawyer and has represented human rights defenders and lawyers in national security cases, some of which have been the subject of previous communications sent by Special Procedures mandate holders, as listed below. He was arbitrarily detained in January 2018 and placed in "residential surveillance in a designated location" on allegations of "inciting subversion of State power". A trial for these charges took place behind closed doors in May 2019, and in June 2020 Yu Wensheng was sentenced to four years in prison and a three-year suspension of his political rights. Concerns relating to his arrest, the charges against him, alleged fair trial rights violations and his conditions in detention were previously raised by Special Procedures communications listed below. Yu Wensheng was released on 1 March 2022, after completing his four-year sentence. He was awarded the Franco-German Prize for Human Rights the Rule of Law in 2018 and Martin Ennals Award for Human Rights Defenders in 2021 in recognition of his human rights advocacy.

Yu Wensheng was the subject of two previous communications sent by Special Procedures mandate holders to your Excellency's Government on 6 March 2018 (UA CHN 5/2018) and on 13 August 2020 (AL CHN 16/2020). We thank your Excellency's Government for its replies to these communications, however remain concerned, given that in the response to AL CHN 16/2020 your Excellency's Government stated that in recent years "China has continuously introduced measures to protect the right of lawyers to practise, striving to create a favourable environment

for lawyers to perform their duties in accordance with the law and to take part in legal actions”, which appears to be at odds with the reports that Special Procedures mandate holders continue to receive regarding the detention, indictment and conviction of human rights lawyers in China since this response in 2020, and as evidenced by the below communications sent by Special Procedures mandate holders to your Excellency’s Government since then, raising such concerns.

The Working Group on Arbitrary Detention, in its Opinion No. 15/2019, has found the deprivation of liberty of Mr. Yu Wensheng, being in contravention of articles 2, 3, 6, n7, 8, 9, 10, 11(1), 19, 20 and 21(1) of the Universal Declaration of Human Rights, arbitrary and falls within categories I, II, III and V.

Special Procedures mandate holders have previously communicated concerns regarding the persecution of human rights lawyers working in China, some of whom Yu Wensheng defended in court. We raised concerns namely about their arrest, detention, enforced disappearance and long-term imprisonment; on 15 July 2015 (UA CHN 6/2015), 14 September 2016 (UA CHN 7/2016), 26 October 2016 (AL CHN 9/2016), 2 December 2016 (UA CHN 13/2016), 22 March 2017 (UA CHN 3/2017), 24 January 2018 (AL CHN 2/2018), 6 March 2018 (UA CHN 5/2018), 6 April 2018 (AL CHN 7/2018), 9 March 2020 (UA CHN 6/2020), 12 March 2020 (UA CHN 5/2020), 4 December 2020 (AL CHN 20/2020), 28 April 2021 (AL CHN 4/2021), 12 May 2023 (AL CHN 5/2023), 21 July 2023 (AL CHN 11/2023).

We thank your Excellency’s Government for the responses received to a number of these communications, however we remain concerned in light of the below information.

According to the information received:

On 12 April 2023, Yu Wensheng posted on X (formerly Twitter) that Shijingshan police officers had come to his home to question him about a tweet he had posted on 9 April, condemning the sentencing of two prominent human rights lawyers.

On 13 April 2023 at approximately 4 p.m., Xu Yan and Yu Wensheng left their home in Beijing to take the subway to an event they had been invited to at the European Union Delegation. They were prevented from entering the subway however by four plainclothes officers, and one of the officers – reportedly a state security police officer – informed them that they were being summoned to a police station. The officers then took Xu Yan and Yu Wensheng to Shijingshan Bajiao police station.

On the evening of 15 April 2023, approximately seven police officers went to Xu Yan and Yu Wensheng’s home and read aloud a criminal detention notice to their son, who had just recently turned 18. He was not provided with a copy of the notice, nor allowed to take a photo of it. The officers reportedly proceeded to search the home, without providing a search warrant, and confiscated a number of personal items.

On 16 April 2023, two lawyers went to the home of Xu Yan and Yu Wensheng to check on their son and so he could fill out paperwork to entrust them as lawyers for the case. There were reportedly two people guarding the

door of the home, and when the son came to the door, the lawyers could see that two police officers were also inside the home – one in uniform and one plainclothes. When the lawyers informed the officers as to why they were visiting, the plainclothes officer reportedly responded that Xu Yan had already appointed two lawyers and that Yu Wensheng had informed them that he did not want lawyers at this stage.

On 21 May 2023, Yu Wensheng's brother was informed that Xu Yan and Yu Wensheng had been arrested on the charge of "picking quarrels and provoking trouble". The authorities reportedly showed him the arrest warrant but did not provide him with a copy or allow him to take a photo of it.

In late May 2023, it was reportedly revealed that Xu Yan had been further charged by the Beijing Public Security Bureau's Shijingshan Branch with "inciting subversion of state power". Her appointed lawyer scheduled to visit Xu Yan on 30 May 2023, but was reportedly refused by the detention centre, citing ongoing police interrogation as the reason.

In July 2023, Xu Yan and Yu Wensheng's lawyers were reportedly denied access to meet with them.

In October 2023, lawyers for Xu Yan and Yu Wensheng were denied from meeting with them for a second time.

On 19 October 2023, the cases of Xu Yan and Yu Wensheng were reportedly formally reviewed, and their arrest formally approved.

On 18 November 2023, Xu Yan and Yu Wensheng's son reportedly attempted to take his life by overdosing on medication. He was rushed to hospital and prevented from suffering a life-threatening condition. The attempt on his life was reportedly in relation to the extensive police surveillance he had been subjected to since his parents were detained. Police officers reportedly monitor the entrance of the home constantly and accompany him to meals with friends and relatives of Xu Yan and Yu Wensheng.

On 1 December 2023, following multiple complaints and negotiations, lawyers for Xu Yan were permitted to meet with her. During this meeting, she told them that 10 days after the review of her case on 19 October, she had begun a hunger strike to protest the repeated denial of access to her lawyer. Xu Yan informed her lawyers during this meeting that she had been given only a thin blanket and so suffered from the cold, despite other detainees having three, and there being spare blankets in the cell. She is suffering from swelling in her legs and back as a result of having to sit on hard surfaces for prolonged periods, and after six months was permitted medical examination, but was not informed of the exact problem, and she continues to suffer from the pain. When Xu Yan was first detained, she was beaten by other detainees in her cell. The prison authorities deemed it to be a fight, and as punishment Xu Yan was assigned to clean the toilets for two and a half months. Since being detained, Xu Yan has lost approximately 28 kilograms, and the food in the Detention Centre is of low nutritional quality.

During interrogations with police officers, Xu Yan was reportedly threatened for not cooperating with their record taking, and that if her son continued to advocate for her rights, he would be arrested too. She was also reportedly subjected to verbal abuse by the officers.

Xu Yan and Yu Wensheng were initially detained in Shijingshan Detention Centre in Beijing, but have reportedly been moved to the Suzhou Jiangsu Province, meaning that the couple are now detained outside of their registered residential address, and creates substantial difficulty for family members to visit them. Xu Yan is reportedly detained in Suzhou First Detention Centre, and Yu Wensheng in Suzhou Fourth Detention Centre.

Without wishing to prejudge the accuracy of the above mentioned allegations, we wish to express our dismay in relation to the allegedly arbitrary detention of human rights defenders Xu Yan and Yu Wensheng, the charges against them which seem to have been brought against them in relation to their exercising of their right to freedom of opinion and expression and carrying out their peaceful and legitimate human rights work, the conditions they have been subjected to in detention, including the inability to meet with their appointed lawyers, and the apparent surveillance and intimidation of their son, which has reportedly had detrimental impacts on his physical and mental integrity. We are also deeply concerned about the condition of their detention.

We are concerned that the alleged arrest, detention of and charges against Xu Yan and the arbitrary detention of Yu Wensheng appear to be in relation to their exercising of their right to freedom of expression to peacefully and legitimately advocate for human rights – particularly those of detained human rights defenders and lawyers. That they would then be subjected to punitive measures in relation to exercising this fundamental right would not only be in violation of international human rights law and standards, but also indicative of a concerning cycle of detaining and indicting human rights defenders and lawyers advocating for the rights of other human rights defenders who have been detained and indicted.

We also wish to express serious concern regarding the reported surveillance and resulting intimidation of Xu Yan and Yu Wensheng's son, and the threats Xu Yan has reportedly received from officers in relation to her son's advocacy. Special Procedures mandate holders have previously expressed similar concern regarding reported threats and intimidation of the family members of human rights defenders (AL CHN 20/2020, UA CHN 12/2014, UA CHN 4/2012), the aim of which would appear to be twofold – to deter the human rights defender from carrying out their work, and to deter the family member from advocating on their behalf.

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 the factual and legal basis for the arrest and charging of Xu Yan with “picking quarrels and provoking trouble” and “inciting subversion of state power”.
3. Please provide information as to the factual and legal basis for the arrest and charging of Yu Wensheng with “picking quarrels and provoking trouble” and “inciting subversion of state power”.
4. Please provide detailed information as to the refusal of requests for Xu Yan and Yu Wensheng’s lawyers to meet with them in prison.
5. Please provide information as to the factual and legal basis for the reported surveillance and accompaniment of Xu Yan and Yu Wensheng’s son since his parents have been detained.
6. Please provide details as to measures taken by the authorities to ensure the right of lawyers to practice their profession in a safe and enabling environment is guaranteed, including for human rights lawyers and those who may be working on issues deemed politically sensitive. If no such measures have been taken, please indicate a manner in which we may engage with your Excellency’s Government as to the development of such measures.

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

Ganna Yudkivska
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

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. 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.

Furthermore, we would like to refer to article 19 of the UDHR, which guarantees the right to freedom of opinion and expression. The rights to freedom of opinion and expression are further expressed in all global and regional human rights treaties on civil and political rights, confirmed in declarations and resolutions, and is considered reflective of customary international law. As expressed in UDHR article 19, "this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

The conditions for permissible restrictions too are reflected in the UDHR and in numerous regional and global human rights treaties:

First, any restriction must pursue a legitimate objective. The UDHR in article 29, for example, limits those objectives strictly ("solely for the purpose of") to the "respect for the rights and freedoms of others and to meet just requirements of morality, public order and general welfare in a democratic society". Secondly, as expressed in UDHR article 29, as well as in global and regional human rights treaties, any restriction must be "determined by law". Practice by international monitoring bodies have not only a requirement on the form, but also the quality of the law. Thus, for example, the Human Rights Committee has expressed that laws must be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution". With respect of criminal laws, the requirement of clarity is even more strict, see UDHR article 11. Third, restrictions must be necessary and proportionate. The UDHR article 30, for example, prohibits the use of overbroad restrictions which would destroy the essence of the right itself. This has been interpreted as an expression of the principle of proportionality. The requirement further entails that the measure must be the least intrusive measure necessary amongst

those which might achieve their protective function in order to protect a specified legitimate objective. Lastly, States have the burden of proof to demonstrate that any restriction is compatible with the requirements under customary international law.

The right to freedom of expression is a precondition for democracy, the enjoyment of other human rights and for the accountability of authorities. It follows that the systematic use of criminal law to silent dissent would be incompatible with the human rights obligations of the State.

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 that lawyers be threatened with prosecution or administrative, economic or other sanctions 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 citizens, 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. Lawyers are also free “to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization” (principle 23).

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.

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.