

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL CHN 10/2024
(Please use this reference in your reply)

11 June 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 Enforced or Involuntary Disappearances; 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, 54/14, 51/21 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 and prolonged incommunicado detention, conviction and sentencing of woman human rights defender Xu Qin**.

Ms. **Xu Qin** is a woman human rights defender and a leading member of the organizations China Human Rights Observer and China Rose, which work to promote respect for human rights and reform of the legal and political system in China. In recent years, she campaigned for the rights of human rights lawyers who have been arbitrarily detained and had their licenses revoked, with many of the petitioners who were part of the group allegedly having been detained or forcibly disappeared since 2015. She was also formerly secretary general and the main spokesperson for the group Human Rights Watch in China (HRWIC). Reportedly, Ms. Xu Qin was forcibly disappeared in January 2016, believed to be in relation to her work with HRWIC. She was released "on bail awaiting further investigation" four weeks after being disappeared.

On 22 March 2024, the Working Group on Enforced or Involuntary Disappearances reiterated its concern in a general allegation regarding the "Residential Surveillance at Designated Location" (RSDL) and other forms of prolonged incommunicado detention that are tantamount to enforced disappearances ([A/HRC/WGEID/132/1](#)). Similarly, these concerns were also transmitted to your Excellency's Government in the past (OL CHN 15/2018, UA CHN 3/2017). While we thank Your Excellency's Government for its responses to previous communications by the Special Procedures, we note also that China has expressed on several occasions its support for the international community's efforts to eliminate and prevent enforced disappearances, including at the UN Human Rights Council. However, we regret that no response has been received to the general allegations transmitted by the Working Group on this matter.¹

¹ See Working Group on Enforced or Involuntary Disappearances, 115th Session General Allegation (2018); 119th Session General Allegation (2019). See also A/HRC/36/39, para. 71 and A/HRC/19/58/rev.1 pages 36-37

According to the information received:

On 31 January 2018, Ms. Xu Qin attempted to attend the disbarment hearing of a well-known human rights lawyer but was prevented from entering the courthouse by police.

On 9 February 2018, Ms. Xu Qin was allegedly arbitrarily detained by police at her home in Gaoyou City in Jiangsu, and the following day was placed under criminal detention on the charge of “picking quarrels and provoking trouble”. These charges and her allegedly arbitrary detention were reportedly in connection with her human rights advocacy on the disbarment and detention cases of prominent human rights lawyers. The arrest warrant that Ms. Xu Qin’s son eventually obtained was reportedly dated 9 February 2018. However, he was not granted access to it for more than 10 days after his mother was initially detained.

On 14 March 2018, the lawyer appointed by Ms. Xu Qin’s family attempted to visit her in the Yangzhou City Detention Centre but was informed by the authorities there that she had been placed in the RSDL on 11 March 2018.

On 22 March 2018, the detention centre authorities cancelled a planned meeting between Ms. Xu Qin and her lawyer, allegedly because her charges had been changed to “inciting subversion of State power” under the more serious category of “endangering State security”, which carries a maximum potential sentence of 10 years and also provides for denial of access to legal counsel.

On 2 September 2018, Ms. Xu Qin was released on bail pending trial. From March to September 2018, before being released on bail, Xu Qin was prevented from meeting with her lawyer, on account of the change in the charges against her.

On 5 November 2021, Ms. Xu Qin was allegedly arbitrarily detained by authorities at her home, reportedly on the charge of “inciting subversion of State power”. The allegedly arbitrary arrest was reportedly a revocation of the bail she had been granted in 2018 on the same charges. Ms. Xu Qin had recently undergone bypass surgery and was suffering from the after-effects of a stroke and high blood pressure.

On 27 July 2022, Ms. Xu Qin’s lawyer visited her in detention, and found out that she had been in a wheelchair for the previous month, due to her ill-health. After her paralysis and ill-health became public, the detention centre denied Ms. Xu Qin’s lawyer’s permission to visit her and reportedly threatened her family and lawyer against revealing details of her detention and condition, and that they would be detained if they did so.

On 20 September 2022, Ms. Xu Qin’s lawyer was permitted to visit her in detention. On this occasion, she informed him that her health had improved somewhat and that in August the detention centre had arranged a medical check-up and medicines for her.

On 7 November 2022, Ms. Xu Qin's trial began before the Yangzhou Municipal Intermediate People's Court in Jiangsu Province. During the trial, Ms. Xu Qin reportedly stated that the evidence she had given had been obtained through torture and requested that the Prosecution recuse itself on this basis. She also reportedly stated that she had been subjected to sleep deprivation by deliberate noisemaking, getting just four hours of sleep a night as a result. Ms. Xu Qin also reportedly informed the Court that her sleeping area was so small that she could not turn over. The presiding Judge reportedly denied her request for the Prosecution's recusal, and Ms. Xu Qin reportedly did not speak for the remainder of the trial.

On 29 May 2023, a lawyer visited Ms. Xu Qin in detention and learned that she had contracted COVID-19 and was coughing up blood, but the detention centre was only providing her with basic medication. Her lawyer requested a CT scan be done, in order to inspect Ms. Xu Qin's lungs and receive a diagnosis which was granted.

In August 2023, Ms. Xu Qin's lawyer was permitted to meet with her, during which she informed him that she continued to suffer from high blood pressure, issues related to her kidneys and a lack of sleep. Ms. Xu Qin's trial was postponed for a 10th time, with the purported reason given by the presiding Judge that the adjournment was needed due to the importance of the case. Ms. Xu Qin's lawyer emphasised her poor health condition to the Judge, who reportedly instructed the detention centre to monitor her health.

On 29 March 2024, Ms. Xu Qin was convicted of "inciting subversion of State power" under article 105(2) of the Criminal Law of China by the Yangzhou Municipal Intermediate People's Court in Jiangsu Province. She was sentenced to four years imprisonment and two years of "deprivation of political rights" upon completion of her sentence. Ms. Xu Qin's trial was reportedly adjourned 12 times between November 2022 and March 2024. During the trial, Ms. Xu Qin reportedly looked very weak, and needed to be held up by two people to walk or stand.

Ms. Xu Qin has appealed her conviction. She reportedly cannot receive visits or communication from her lawyer or family, which has caused concern regarding the condition of her health.

Without prejudging the accuracy of the allegations, we wish to express our concern regarding the allegedly arbitrary and prolonged incommunicado detention, conviction and sentencing of Ms. Xu Qin, which would appear to be in connection with her legitimate and peaceful human rights activities, specifically her activities defending the rights of human rights lawyers. Notably, during the overall period of her detention, Ms. Xu Qin was also subjected to enforced disappearance every time authorities denied her deprivation of liberty or failed to disclose information on her fate and whereabouts to her lawyer or relatives. In order to constitute an enforced disappearance, the deprivation of liberty of a person must be followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the person, which place such a person outside the protection of the law, regardless of the duration of the said deprivation of liberty or concealment.

We also wish to express serious concern regarding the reported infliction of torture and or other ill-treatment against Ms. Xu Qin in detention, and the use of evidence obtained under those circumstances during her trial, with the trial itself also giving cause for concern, given it was adjourned 12 times, ostensibly due to the case's "importance". We wish to raise concern regarding the response of the presiding Judge to Ms. Xu Qin's testimony that she had been subjected to torture and or ill-treatment, to proceed with the trial without ordering for an immediate investigation to be conducted in response to this information. Regarding the information that Ms. Xu Qin was placed under RSDL, we wish to reiterate our concern and recall that Special Procedures mandate holders have repeatedly written to your Excellency's Government expressing concern in relation to the use of this practice in contravention of China's human rights obligations. We also wish to express concern in relation to the reported health condition of Ms. Xu Qin since she was reportedly arbitrarily detained, and apparent lack of access to adequate health care while in detention, seemingly contributing to her deteriorating condition.

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.

We are issuing this appeal in order to safeguard the rights of the abovementioned individual 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 detailed information as to the factual and legal basis for the charges of "inciting subversion of State power" against Ms. Xu Qin.
3. Please provide detailed information as to the factual and legal basis for the conviction of Ms. Xu Qin on these charges.
4. Please provide detailed information as to the factual and legal basis for the reported 12 adjournments of Ms. Xu Qin's trial between November 2022 and March 2024.
5. Please provide information on how your Excellency's Government ensures that Ms. Xu Qin's family can realize their right to know the truth about her fate and whereabouts while deprived of her liberty and what steps your Excellency's Government is taking to ensure that information about the fate and whereabouts of persons deprived of their liberty and access to their loved ones, as well as to a legal counsel of choice, are guaranteed.

6. Please provide detailed information as to the current health condition of Ms. Xu Qin and the access and availability of quality medical care and necessary treatment.
7. Please provide detailed information as to the status of an investigation into reported torture and ill-treatment and other human rights violations to which Ms. Xu Qin has been subjected to in detention, and if no such investigation has been conducted, please provide information as to how this is in adherence with China's human rights obligations under international law.
8. Please provide detailed information on how the exclusionary rule set forth in article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is provided for and implemented in China. Within this context, please explain the applicable law, procedure and practice to challenge the admission and use of material evidence alleged to be obtained by torture or other cruel, inhuman or degrading treatment or punishment during trials in the respective legal proceedings.

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 prevent any irreparable damage to the life and personal integrity of Ms. Xi Qin, 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

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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).

We would like to draw the attention of your Excellency's Government to articles 3, 5, 9 and 19 of the UDHR, as well as articles 6, 7, 9, 10 and 16 of the ICCPR read alone or in conjunction with article 2.3, which guarantee the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to be recognized as a person before the law and to a trial within a reasonable time, to challenge the legality of the detention before the courts, to be released subject to guarantees to appear for trial, to a fair and public trial before an independent and impartial tribunal without undue delay and with legal assistance of their choosing, free of discrimination, the right to be treated with humanity and with respect for the inherent dignity of the human person, and the right to an effective remedy,

Torture and cruel, inhuman or degrading treatment or punishment are prohibited under article 5 of the UDHR and article 7 of the ICCPR. Whilst China has not ratified the ICCPR, we wish to reiterate that the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an *erga omnes* and *jus cogens* norm, as expressed as a principle of customary international law.

Furthermore, torture and cruel, inhuman or degrading treatment or punishment are prohibited in articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by China on 4 October 1988. Accordingly, pursuant article 2 of the CAT, China has undertaken to ensure to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Regarding the guarantees of a fair trial – human right enshrined in article 10 of the UDHR and in article 14 of the ICCPR¹² – article 15 of the CAT operates as a reinforcement of fair trial rights as well as a prohibition on its own against being able to rely on any evidence obtained through torture and other cruel, inhuman or degrading treatment or punishment, in legal proceedings by providing that “no statement which is established to have been made as a result of torture may be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” The objective of this article is to ensure that any statement or confessions procured by torture is not admissible and must not be admitted against a party to legal proceedings. Article 15 of the CAT reinforces the international commitment to preventing the use of torture and other ill-treatment (article 2 and 16) and underscores the importance of upholding the rule of law in legal proceedings and of guaranteeing the right of the accused to a fair trial.

We would like to refer to article 19 of the UDHR, which guarantees the right to freedom of expression. While certain restrictions may be placed on freedom of expression, for the protection of national security or of public order (*ordre public*), or of public health or morals, they may not be arbitrarily imposed on those sharing legitimate concerns, observations or opinions on health or Government policy. We would also like to refer to article 20 of the UDHR, which guarantees the right to freedom of association and assembly.

In this regard, as indicated by the Human Rights Committee, 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 the ICCPR. We would like to further remind your Excellency's Government that the right to challenge the lawfulness of detention before a court, protected under article 9 of the ICCPR, is a self-standing human right and a peremptory norm of international law, which applies to all forms of arbitrary deprivation of liberty.

Moreover, as established by the Human Rights Committee in its general comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture and enforced disappearances. Failure to investigate and prosecute such violations is a breach of the norms of human rights treaties (CCPR/C/21/Rev.1/Add.13, para. 18). Impunity for such violations can be an important element contributing to the recurrence of violations. The Committee further acknowledged in general comment No. 36 that "the right to life guaranteed by article 6 of the Covenant, including the right to protection of life under article 6(1), may overlap with the right to security of person guaranteed by article 9(1). Extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life. Failure to respect the procedural guarantees found in article 9(3) and (4), designed *inter alia* to prevent disappearances, could also result in a violation of article 6". In this regard, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable (CCPR/C/GC/36 paras. 57-58).

Notably, the prohibition of enforced disappearance has attained the status of *jus cogens*. In this regard, we wish to recall that the United Nations Declaration on the Protection of All Persons from Enforced Disappearances establishes that "all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness (article 4), no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6). Furthermore, 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), and the right to a prompt and effective judicial remedy must be guaranteed as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9).

The Declaration further sets out the necessary protection relating to the rights 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 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 (articles 10 and 12). It further stipulates that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly, and impartially investigated by that authority (article 13). The Declaration also establishes that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14), and that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); not benefit from any amnesty law (article 18); and the victims or family relatives have the right to obtain redress, including adequate compensation (article 19).

We would like to reiterate that, under international law, the failure or refusal to acknowledge a deprivation of liberty by State agents or persons or groups of persons acting with their authorization, support, and acquiescence, constitute enforced disappearance, irrespective of the duration of the deprivation of liberty or the type of concealment concerned. State authorities are thus obliged to take all necessary measures to effectively protect the rights of the persons deprived of their liberty, as it automatically assumes responsibility for their lives, physical integrity, and wellbeing. In its General Comment on the right to recognition as a person before the law in the context of enforced disappearance, the Working Group noted that when a person deprived of liberty is not acknowledged by the State, the legal rights of this person are placed in a legal limbo, a situation of total defencelessness. The crime of enforced disappearance puts the detainee outside of the protection of the law, denies the person of legal existence and prevents the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms.

In its report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3), the Working Group on Enforced or Involuntary Disappearances recommended that States define enforced disappearance as an autonomous crime in national legislation and establish different modes of criminal liability, including abetting, instigating, acquiescing and actively covering up an enforced disappearance, as well as criminal liability for command or superior responsibility; and create mechanisms that can promptly receive and process complaints of enforced disappearances, under the responsibility of authorities who are independent of the institutions to which the alleged perpetrators belong or may be linked. These mechanisms should be empowered to trigger prompt investigations of the complaints received.

Additionally, in the study on enforced disappearances and economic, social and cultural rights, the Working Group observed that the enforced disappearance of human rights defenders, activists or persons actively promoting the enjoyment of economic, social and cultural rights, are used as a repressive tool to deter the legitimate exercise, defence or promotion of the enjoyment of these rights. Due to their collective character, such measures also violate their economic, social and cultural rights, the rights of others engaged in related activities, and of the larger

community of people who relied on the disappeared person to represent and fight for their rights. Similarly, in its General Comment on Women and enforced Disappearances, the Working Group also noted that States have an obligation to recognize the specific types of harm women suffer based on their gender and the resulting psychological damage and social stigma as well as the disruption of family structures (A/HRC/WGEID/98/2 para. 5).

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 wish to draw your Excellency's Government's attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified by China on 27 March 2001, which stipulates the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this regard, the Committee on Economic, Social and Cultural Rights (CESCR) adopted general comment No. 14. This general comment describes the normative content of article 12 of ICESCR and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfil the right to health. General comment 14 indicates that States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. (Para. 34). In this connection, we would also like to refer your Excellency's Government to The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Basic Principles for the Treatment of Prisoners. Principle 9).

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.