

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 13/2024
(Please use this reference in your reply)

20 September 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 52/7, 51/8, 52/9, 52/4 and 53/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning human rights lawyer Mr. **Xie Yang**.

The case of Mr. **Xie Yang** has been raised by Special Procedures in a previous communication¹ (UA CHN 3/2017) to which your Excellency's Government responded on 18 April 2017². That earlier communication contained allegations of the arbitrary arrest, short-term disappearance and prolonged incommunicado detention of four human rights defenders and lawyers, including Mr. Xie Yang; their alleged subjection to torture and other cruel, inhuman or degrading treatment in detention, in particular during Residential Surveillance at Designated Location (RSDL); and concerns that the charges against them were related to their activities as human rights defenders.

We have recently received additional information concerning the current situation of Mr. Xie Yang, which forms the basis of this new communication.

The new information received concerns the conditions of detention of Mr. Xie Yang while being deprived of his liberty since 11 January 2022, which could amount to torture and other cruel, inhuman and degrading treatment or punishment. We further raise allegations of violation of his right to due process.

According to the information received:

Background

Mr. Xie Yang is a Chinese citizen born on 4 February 1972 and known for his work as a human rights lawyer. He officially commenced his legal practice in 2011 and has represented several cases involving abuses of public power and has been actively engaged in and supported social rights movements in the

¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22996>.

² <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33449>.

country.

As highlighted in the above-mentioned previous communication, Mr. Xie Yang was allegedly one of four human rights lawyers who were arrested during the 709 Crackdown in July 2015 and was released on bail in May 2017. On 26 December 2017, he was convicted for “inciting subversion of state power” but was exempted from criminal punishment. After his release, he continued practicing human rights law, including representing a number of high-profile cases.

On 11 August 2020, Mr. Xie Yang’s licence to practice as a lawyer was revoked due to his past conviction. However, he carried on his support for social movements and his advocacy work.

Arrest in January 2022

On 11 January 2022, Mr. Xie Yang was allegedly unlawfully detained by the Changsha Public Security Bureau in cell 107 at Changsha No. 1 Detention Centre, on suspicion of “inciting subversion of state power”.

On 17 February 2022, his father received the detention notice and Mr. Xie Yang was formally arrested.

Treatment and current conditions of detention

In January 2024, Mr. Xie Yang reportedly described his detention in an overcrowded cell designed for 18 people but holding 20. He was complaining that the lack of space caused severe swelling pain in his calves, waking him up in pain every day.

On 12 March 2024, it is alleged that the detention centre police demanded that Mr. Xie Yang expose his genitals, perform a lewd dance, and pay a 20’000 Renminbi (RMB) bribe to be allowed to meet with officials as he wanted to make a complaint.

On 14 March 2024, it is alleged that Mr. Xie Yang was shackled by the Deputy Director of the Centre and its Acting Head of Zone 1 because he had pressed the alarm multiple times to request a meeting with the detention centre leader. Despite a brief reprieve during his lawyer’s visit on 18-19 March, one of the detention centre’s officers reapplied the shackles which were kept on until 27 March 2024, resulting in Mr. Xie Yang being shackled for 14 days in total.

On 27 May 2024, it is alleged that the Changsha No. 1 Detention Centre increased the number of detainees in cell 107 from over 20 to over 40 people.

Violation of Mr. Xie Yang’s right not to be deprived of his liberty arbitrarily and his rights to due legal process

As of August 2024, Mr. Xie Yang’s detention was allegedly extended for a period of 2 years and 7 months without having been formally charged.

It is alleged that Mr. Xie Yang has received nine extension notices lacking the required approval from the Supreme Court, thereby violating judicial procedures, for his detention period from 29 November 2022 to 28 August 2024. Moreover, it is reported that no notices have been given for his detention period between 17 July to 15 August 2022 (one month) and 1 September to 28 November 2022 (three months).

It is alleged that Mr. Xie Yang has not been allowed to receive any family visit since his arrest and could meet for the first time with his defence lawyer on 3 August 2022, nearly 6 months after he was arrested. He then reportedly had to wait until the 17 May 2023 before a second meeting. His third meeting was on 18-19 March 2024, and his last meeting with his defence lawyer allegedly dates to May 2024. In addition, one of Mr. Xie Yang defence lawyers was denied the right to photocopy case materials, forcing them to transcribe them by hand, which allegedly violates article 34 of the Law of the People's Republic of China on Lawyers³.

It is further alleged that prosecutors stationed at the detention centre have failed to act on Mr. Xie Yang's complaints of unlawful and arbitrary detention and extensions as well as unlawful shackling on 29 February 2024 and 27 March 2024.

Illegal freezing of assets

The Changsha Public Security Bureau allegedly froze all of Mr. Xie Yang's bank cards, took his safe deposit box containing cash and important documents from his home for his defence, and froze his real estate. These actions were reportedly taken despite Mr. Xie Yang's case not involving economic disputes or fines, equating to illegal seizure of assets.

While we do not wish to prejudge the accuracy of these allegations, we are concerned about the conditions of detention of Mr. Xie Yang and allegations of prolonged arbitrary detention and extensions without due process, and also the denial of rights associated with the proceedings. These allegations implicate the obligations of the People's Republic of China to ensure that all persons in their custody are not subjected to torture and/or other cruel, inhuman or degrading treatment or punishment, which is *jus cogens* norm and also found in multiple articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by China on 4 October 1988. Additionally, we refer your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

These allegations may also involve potential violations of the right to security and liberty of person and the prohibition of arbitrary arrest and detention, and the rights to due process and fair trial standards, according to articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) respectively.

Moreover, we would like to stress that when procedural guarantees are not respected, it creates potential risks for torture and/or other cruel, inhuman or degrading treatment or punishment. Therefore, it is important to highlight that the due process

³ See: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content_1471604.htm.

guarantees are accepted as necessary measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, an obligation reflected in article 2 of the CAT. The lack of human rights-compliant procedures applied to persons arrested and/or detained, and the absence of timely judicial oversight, increase the risk of actual threats of ill-treatment, and measures must be taken to prevent such harm. We also refer your Excellency's Government of the right of Mr. Xie Yang to complain safely and without retaliation or reprisals pursuant to article 13 of the CAT and of the duty of China to investigate said complaints pursuant to article 12 of the same treaty.

We are concerned that Mr. Xie Yang's arrest, detention and prosecution are closely linked to his extensive work as a human rights defender and lawyer, as well as his participation in social movements and the exercise of his rights, including to freedom of expression, for which he should be protected against State retaliatory measures aimed at silencing him or dissuading his work.

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 indicate the legal and factual basis for the arrest and detention of Mr. Xie Yang.
3. Please provide detailed information regarding the conditions in which Mr. Xie Yang is currently being held, including the exact size of his cell and the number of detainees held therein, access to ventilation, natural light and heating, sanitary facilities, including access to potable water, daily routine including outdoor space and sleep cycle, lighting, bedding and furniture, as well as his access to the outside world, notably to his lawyer and family.
4. Please provide information on all measures and efforts taken or planned to be taken to protect Mr. Xie Yang's right to complain and against retaliation, and any investigation opened regarding his allegations of torture and/or other ill-treatment in a prompt, impartial and effective manner. Should such investigations be concluded, please provide the outcome of those investigations.
5. Please provide information about Mr. Xie Yang's respect for his due process rights as established in article 10 of the UDHR.
6. Please indicate what measures are being taken to prevent the recurrence of the alleged acts and to ensure that human rights defenders in China are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and

harassment of any sort.

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 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.

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

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
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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 remind your Excellency's Government the following relevant international human rights standards, which appear to have been disregarded considering the reported allegations:

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

We recall that the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is established in article 5 Universal Declaration of Human Rights (UDHR), as well as in multiple articles of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

We stress that attached to the peremptory and absolute prohibition of torture are obligations to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to protect victims from reprisals and intimidation, and to provide remedies to victims. We refer your Excellency's Government to the comprehensive report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on all aspects including good practices of States, relating to the investigation and prosecution of acts of torture and related ill-treatment (A/HRC/52/30).

States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have explicit treaty duties to establish all acts of torture as offences under domestic law (art. 4 CAT), to exercise jurisdiction over said offences (art. 5), to receive complaints and examine them promptly and impartially (art. 13), to take to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of their complaint or any evidence given (art. 13), and to investigate those allegations promptly and impartially (art. 12). Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (art. 2(3) and 2(2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition. Amnesties provided by domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction. Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means (art. 15). Victims are to be protected from reprisals or intimidation during said investigations (art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14). States are to establish jurisdiction over all acts of torture on territoriality, flag State, active nationality, passive nationality, and universal jurisdiction principles (art. 5).

In connection to such prohibition, we recall the obligations of States to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to

provide remedies to victims. Such investigations are recommended to be carried out in line with the United Nations Manual on the Effective Investigations and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Protocol” revised 2022 edition).

Concerning the obligation to provide remedies for victims of torture, the Committee Against Torture has affirmed that the comprehensive reparative concept entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. It has also determined that ‘victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention’ and that ‘a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted. Moreover, the Committee has established that ‘the obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.

Likewise, we wish to remind your Excellency’s Government that according to paragraph 5 of the Committee Against Torture’s general comment No. 2 (CAT/C/GC/2), no exceptional circumstances whatsoever (including a state of war or threat thereof, internal political instability or any other public emergency, any threat of terrorist acts or violent crime, armed conflict, international or non-international) may be invoked by a State party to justify acts of torture in any territory under its jurisdiction.

In addition, we would like to remind the Government of the People’s Republic of China of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), of which many of the above-mentioned allegations do not appear to meet these basic minimum standards, in particular those relating to overcrowding, general unsanitary conditions of detention, access to adequate and appropriate healthcare, and contact with the outside world.

Rule 12 et seq. provide the conditions on accommodation. Rule 12 para. 1 highlights that overcrowding should be temporary, if necessary, only because of special reasons. Rule 24 et seq. provide the conditions concerning health-care services that should be provided by the State (rule 24 para. 1). Rule 58 provides for “*prisoners to be able to communicate with their family and friends at regular intervals*”, and rule 61 para. 1 provides that “*prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff*” as part of their right to have contact with the outside world.

Arbitrary detention

Regarding the above alleged facts and concerns on arbitrary detention and violation of the right to freedom of expression, we would like to draw the attention of your Excellency's Government to the 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 your Excellency's Government to articles 9 and 10 of the UDHR 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.

Right to freedom of expression

Article 19 of the UDHR 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 are considered reflective of customary international law. As expressed in 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*". This right applies online as well as offline, protects the freedom of the press as one of its core elements and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

The Human Rights Council, in its resolution 13/13, urged States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms (A/HRC/RES/13/13). Further, in its resolution 12/16, the Council called on States to refrain from imposing restrictions that are not consistent with international standards, including on: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups (A/HRC/RES/12/26).

Independence of judges and lawyers

We would also like to recall 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).

Human Rights Defenders

Moreover, we would like to bring to your attention 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, as well as to:

- article 5(b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations.
- article 6(a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms.
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, 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.