

**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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: UA CHN 16/2024  
(Please use this reference in your reply)

20 November 2024

Excellency,

We have the honour to address you in our capacity 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/4, 51/8, 52/9, 50/17, 53/12 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the reported dire conditions of human rights defender Mr. Xu Zhiyong in detention, whose health is reportedly deteriorating after he has been on a hunger strike since the beginning of October 2024 to protest the violation of his human rights in prison.**

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 homeless people 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 promoting human rights, political reform, social justice and democracy.

On 10 April 2023, Mr. Xu was found guilty of "subversion of state power" under article 105(2) of the Criminal Law of the People's Republic of China and sentenced to 14 years in prison by the Linshu County Court in Linyi City in Shandong province. He was arrested in December 2019 after convening a peaceful gathering of human rights defenders in Xiamen focusing on issues such as the rule of law, democratic reforms, and human rights in China. Before being sentenced, he has been in pre-trial detention since February 2020 for over three years, reportedly without access to a lawyer for the first thirteen months. It has been alleged that, during his pre-trial detention, he was subjected to torture and ill-treatment while undergoing "residential surveillance in a designated location" (RSDL), a form of secret detention without access to family members or a lawyer.

Mr. Xu had previously been sentenced to four years in prison for "gathering crowds to disrupt public order" under article 290 of the Criminal Law of the People's Republic of China, in connection to his human rights work with the New Citizen's Movement. He was released in July 2017.

We raised concern about the abovementioned allegations in a number of communications to your Excellency's Government, including CHN 5/2023, CHN 2/2022, CHN 4/2021, CHN 8/2020, CHN 12/2013, CHN 8/2013, CHN 29/2010, and CHN 21/2009. 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, CHN 29/2010.

We further recall that the Working Group on Arbitrary Detention issued an opinion in 2020 concerning the detention of Mr. Xu (A/HRC/WGAD/2020/82). In this opinion, the Working Group considered that the deprivation of liberty of Mr. Xu lacks a legal basis and is thus arbitrary, falling under category I; his detention was resulted from his legitimate exercise of the rights and freedoms under articles 19, 20(1) and 21(1) of the Universal Declaration, falling under category II; his detention is in violation of the right to a fair trial and due process, falling under category III; and his detention constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights as well as principle 5 of the Body of Principles on the grounds of discrimination based on political views and status as a human rights defender, falling under category V of the criteria for the determination of arbitrary detention.

According to the information received:

On 4 October 2024, Mr. Xu began a hunger strike at the Lunan Prison in Shandong province, where he is held, to protest the inhuman treatment he has reportedly been subjected to while in detention, as well as other violations of his rights, including the restricted contact with his family members. Since then, he has reportedly lost weight. It is unclear whether Mr. Xu has been given access to medical care during his hunger strike. Human rights activists close to Mr. Xu fear that the conditions in which he has been held may lead to permanent complications or seriously put his life at risk.

In recent months, Mr. Xu has been held in a cell with three other inmates, who have allegedly been harassing him and keeping him under continuous monitoring, reportedly upon the request of prison officials, including by escorting him to the toilet. It has also been reported that the prison system refers to Mr. Xu as "prisoner no. 003", using a code name instead of his real name. Furthermore, his recent attempts to send letters to his family members and partner and to call them have allegedly been often hindered, which limited his capacity to communicate with them. Mr. Xu's family members are allowed to visit him once a month. However, they have reportedly faced threats, harassment and intimidation, as they were allegedly warned against divulging information about the human rights defender. Mr. Xu has also not been able to have access to a legal representative allegedly since April 2023.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our utmost concern about the reported dire condition of Mr. Xu in detention and his deteriorating health. We are particularly preoccupied about Mr. Xu's health status in light of the allegations received with regards to the ill-treatment he has reportedly been subjected to while in detention, which might have made him more exposed to health issues. We further wish to raise concern about the allegations concerning the constant monitoring of Mr. Xu in detention, which not only places additional pressure on him but also violates his right to privacy and deprives him of his dignity. Mr. Xu's reported restricted access to his

family and a lawyer is also worrisome. We urge your Excellency's Government to ensure Mr. Xu has access to adequate medical care during his hunger strike and can regularly and unhinderedly communicate with his family members and receive visits from them.

In this context, we recall that persons deprived of liberty must always be treated in a humane manner and with respect for their inherent dignity. They shall always have access, *inter alia*, to effective legal representation and adequate medical assistance; prompt judicial review of their initial and continuing deprivation of liberty; remedies for any violations; and have the possibility to communicate with a lawyer of choice, their relatives and to be visited by independent human rights monitoring bodies.

Inadequate conditions of detention and standards of treatment may constitute violations of the prohibition of cruel, inhuman or degrading treatment or punishment, or even torture in violation of articles 7 and 10 of the ICCPR; as well as articles 1, 2, and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by China in 1988.

We wish to emphasize that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and non-derogable. No circumstances, no matter how exceptional they may be, can ever justify torture or ill-treatment nor any form of impunity for such acts.

Within this context, we also recall that the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Nelson Mandela Rules") provide that prisoners "should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status". The Nelson Mandela Rules further establish that inmates should also be allowed to regularly communicate with their family and friends, in writing, using telecommunication, or through electronic, digital and other means, and by receiving visits.

We also wish to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China on 27 Mar 2001, which establishes that States have an obligation to guarantee the right to the highest standard of physical and mental health. In line with general comment No. 14 para. 34 of the Committee on Economic, Social and Cultural Rights (CESCR), this is attained, *inter alia*, by refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. The general comment further underlines that the "health is a fundamental human right indispensable for the exercise of other human rights" (para. 1) and that the right to health contains both freedoms and entitlements, including the right to be free from torture as well as "the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health" (para. 8).

We would furthermore like to refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. As interpreted by the Human Rights Committee in general comment No. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated

with “against the law” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality (paragraph 12). According to the same general comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

Further, we would like to call for Mr. Xu’s immediate and unconditional release, recalling that the arrest, conviction and sentencing of human rights defenders for carrying out their legitimate work, or for exercising their human rights, including for convening a peaceful assembly, under the pretext of national security is incompatible with international human rights law. Given that Mr. Xu was convicted for “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 articles 19, 21 and 22 of 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 Covenant, China has an obligation to refrain from any acts which would defeat the object and purpose of the ICCPR prior to its entry into force (article 18 of the 1969 Vienna Convention on the Law of Treaties).

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, and in particular to articles 1 and 2, 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. Furthermore, article 5 of the Declaration establishes that everyone has the right, individually and in association with others, to meet or assemble peacefully, while article 6(b) and (c) provide that everyone has the right 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, article 12 of the Declaration recalls the obligation of the State to “ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action” as a result of their legitimate exercise of their rights.

We wish to recall that according to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment, or interference. The free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees.

Considering the New Citizen Movement included lawyers, it is pertinent to remind your Excellency's Government that, according to the UN Basic Principles on the Role of Lawyers, lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall 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 and 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. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession. (Principle 23).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response as soon as possible on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information about the state of health of Mr. Xu Zhiyong and the measures undertaken to ensure his access to appropriate and adequate medical care while in detention, in particular during his hunger strike.
3. Please provide detailed information on the detention conditions of Mr. Xu Zhiyong and explain how they are in compliance with your Excellency's Government obligations under the national legislation and international human rights law. Please also provide information about the measures undertaken to ensure his physical and psychological safety and well-being and to protect him against harassment, intimidation, and torture and other cruel, inhuman or degrading treatment or punishment. Please also indicate any inquiry or investigation that has been undertaken and its outcome.
4. Please provide details about the measures undertaken by the authorities to ensure human rights defenders are able to conduct their work in a safe and enabling environment, without fear of reprisals, harassment or intimidation

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 responsible of the alleged violations.

Further, 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.

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.

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.

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

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